

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, January 26, 2005

WILLIAMS SETTLEMENT – SENATE BILL 6

PURPOSE OF REPORT

To request:

- Adoption of the proposed emergency regulations to implement and administer 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*. SB 6 creates two new programs, the SFNAGP and the ERP. The SFNAGP and the ERP are summarized as follows:

- *School Facilities Needs Assessment Program*  
Provides \$25 million for the school districts to perform a one-time comprehensive needs assessment on eligible school sites. Regulation Sections 1859.310 through 1859.319, as shown on the Attachment, provide details on the apportionment of funding, qualifications of inspectors, program reporting requirements and eligible expenditures. The proposed regulations also include the *Needs Assessment Report* (Form SAB 61-01) and the *Expenditure Report* (Form SAB 61-02). The Form SAB 61-01 will be available as a web-based form to be submitted on-line and is due to OPSC by January 1, 2006. For informational purposes, the Attachment includes a paper version of the Form SAB 61-01.
- *Emergency Repair Program*  
Beginning with 2005/2006 Fiscal Year, funds will be made available annually to the School Facilities Emergency Repair Account in the amount of 50 percent of the unappropriated balance of the Proposition 98 Reversion Account or \$100,000,000, whichever is greater, until \$800 million has been appropriated. These funds will provide reimbursement of costs for emergency repairs at eligible school sites to mitigate conditions that pose a threat to the health and safety of pupils or staff. Regulation Sections 1859.320 through 1859.328, as shown on the attachment, outline the eligibility requirements for allocation of ERP funds. The regulations include the proposed *Application for Reimbursement and Expenditure Report* (Form SAB 61-03).

STAFF COMMENTS

By utilizing the State Allocation Board (SAB) Implementation Committee meetings as a forum to gather input from interested parties, the Office of Public School Construction (OPSC) has developed the proposed regulations contained in the Attachment to implement and administer the SFNAGP and ERP.

Staff has become aware through the discussions at the SAB Implementation Committee meetings, that some ERP projects may include incidental requirements such as access compliance upgrades. It is clear that the Legislative intent of this program is to provide funds to exclusively address dangerous or uninhabitable conditions in our schools. As discussed by the SAB Implementation Committee, the proposed regulations preclude the reimbursement of costs to bring facilities into compliance with Title 24 (building code requirements) of the California Code of Regulations when the work is not central to the mitigation of a health and safety hazard.

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STAFF COMMENTS (continued)

At the last Implementation Committee meeting on January 6, 2005, there were three sections of the regulations marked still under review and subject to modification prior to these regulations being presented to the State Allocation Board. Two of those sections, Regulation Sections 1859.318 and 1859.328, have been modified.

Upon adoption by the SAB, the OPSC will submit these regulations as emergency regulations to the OAL. In addition to the development and administration of these programs, the OPSC is required to make two reports to the Governor and Legislature pursuant to SB 6. By June 30, 2005, the OPSC must report the progress made by school districts toward completion of the needs assessments. By June 30, 2008, the OPSC must report on expenditures already made and future expenditures anticipated under the ERP.

The OPSC will present an item for apportionment of the Needs Assessment Grants at the February 23, 2005, SAB meeting. Staff has analyzed and confirmed that the funding criteria set forth in statute provide sufficient direction to make the apportionment absent the regulations.

RECOMMENDATIONS

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

## ATTACHMENT

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

### Article 1. General Provisions and Definitions

#### Section 1859.300. Purpose.

These regulations implement the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.70 and 17592.71, Education Code.

#### Section 1859.301. Director of General Services.

The Director of General Services, or the Director's legal designee, shall perform all acts necessary to carry out the provisions of these regulations except such functions reserved to the Board and to other agencies by law or by Sections 1859.300 through 1859.329, inclusive. These acts to be performed include, but are not limited to, entering into contracts to administer the regulations.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17070.20, Education Code.

#### Section 1859.302. Definitions.

For the purposes of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"Act" means California Education Code (EC) Sections 17592.70 through 17592.73, inclusive, and 41207.5.

"Apportionment" means an allocation of funds by the Board for eligible School Facilities Needs Assessment Grant Program or Emergency Repair Program expenditures.

"Accepted Application(s)" means a Local Educational Agency (LEA) has submitted the application and all documents to the Office of Public School Construction (OPSC) that are required to be submitted with the application as identified in the General Information Section of the Form SAB 61-03, *Application For Reimbursement and Expenditure Report*, (New 01/05), as appropriate, and the OPSC has accepted the application.

"Board" means the State Allocation Board as established by Section 15490 of the Government Code.

"CBEDS Report" means the enrollment information provided through the California Basic Educational Data System (CBEDS) by the LEA to the California Department of Education (CDE).

"Certification of Eligibility" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for the purpose of a one-time determination of whether a school site meets the provisions of Section 1859.311(b).

"Cosmetic Repairs" means repairs that enhance the physical environment of the school and are not directly related to the mitigation of a health and safety hazard.

"Deferred Maintenance Program (DMP)" means the State deferred maintenance funding authorized by EC Sections 17582 through 17588, inclusive.

"Emergency Facilities Needs" means structures or systems that in their present condition pose an immediate threat to the health and safety of pupils and staff while at school.

"Emergency Repair Program (ERP)" means the repair program implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"Emergency Repair Program Grant" means an Apportionment provided by the State to reimburse the LEA for eligible costs, pursuant to EC Section 17592.72 and Regulation Sections 1859.323, 1859.323.1, and 1859.323.2.

"Expended" means work has been completed, or services rendered, and a warrant has been issued for payment.

"Employee" means an individual that is a classified or certificated temporary, probationary or permanent employee receiving a warrant as payment from the LEA.

"Form SAB 61-01" means the *Needs Assessment Report*, Form SAB 61-01 (New 01/05), which is incorporated by reference.

"Form SAB 61-02" means the *Expenditure Report*, Form SAB 61-02 (New 01/05), which is incorporated by reference.

"Form SAB 61-03" means the *Application For Reimbursement and Expenditure Report*, Form SAB 61-03 (New 01/05), which is incorporated by reference.

"Interim Evaluation Instrument" means the evaluation tool developed pursuant to EC Section 17002(d)(2).

"Like-Kind Material/System" means a building material or system that is substantially identical in function to the existing building material or system to be replaced.

"LEA Representative" means a member of the LEA staff or other agent authorized to execute and file application(s) with the Board on behalf of the LEA and/or act as liaison between the Board and the LEA.

"Local Educational Agency (LEA)" means a school district or county office of education meeting the requirements of Section 14101(18)(A) or (B) of the federal Elementary and Secondary Education Act of 1965.

"Needs Assessment" means the review of the facilities conducted pursuant to the Section 1859.315(c), the Form SAB 61-01 and EC Section 17592.70.

"Needs Assessment Grant" means the funding provided pursuant to EC Section 17592.70(c) and Sections 1859.312 and 1859.313.

"Nonessential Repairs" means work that is not directly related to the mitigation of a health and safety hazard including, but not limited to, repairs to correct items not in compliance with Title 24 of the California Code of Regulations that existed prior to and are not an Emergency Facilities Needs.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the School Facilities Needs Assessment Grant Program and the Emergency Repair Program.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve including individuals with exceptional needs meeting the provisions of EC Section 56026.

"Ready for Apportionment" means a review of an Accepted Application has been completed by the OPSC and it has been determined that it meets all requirements of law for an Apportionment, and the OPSC will recommend approval to the Board.

"Routine Restricted Maintenance Account" means the account into which funds are deposited by LEAs pursuant to EC Section 17070.75.

"School Facilities Emergency Repair Account" means the account established by the OPSC pursuant to EC Section 17592.71(a).

"School Facilities Needs Assessment Grant Program" means the one-time assessment of school facilities implemented under the Act, Senate Bill 6, Chapter 899, Statutes of 2004.

"School Facility Program (SFP)" means the Leroy F. Greene School Facility Act of 1998, commencing with EC Section 17070.10.

"Section" means a section in these Subgroup 5.7 regulations.

"Unfunded List" means an information list of unfunded projects.

"Web-Based Progress Report Survey" means the on-line worksheet provided by the OPSC and accessible through the OPSC Website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for the purpose of submitting a one-time report on the progress made toward completing the Needs Assessment.

"Web-Based Needs Assessment" means the on-line Form SAB 61-01 provided by the OPSC and accessible through the OPSC Website at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for the one-time purpose of submitting the Needs Assessment data electronically.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.70, 17592.71, 17592.72 and 17592.73, Education Code.

## Article 2. School Facilities Needs Assessment Grant Program

### Section 1859.310. General.

A school site that qualifies for the School Facilities Needs Assessment Grant Program according to the provisions of EC Section 17592.70(b) shall be allocated funds by the Board in order to conduct a one-time comprehensive school facilities needs assessment. An LEA that receives funds under this Article shall be required to complete and submit a Web-Based Needs Assessment to the OPSC for each school site meeting the provisions of Section 1859.311.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

### Section 1859.311. Eligible Schools.

An LEA that has a school site meeting all of the following is eligible for the School Facilities Needs Assessment Grant Program:

- (a) The school was identified on the list published by the CDE pursuant to EC Section 17592.70(b).
- (b) The school was newly constructed prior to January 1, 2000.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

### Section 1859.312. Apportionment of Funds.

The Board shall allocate ten dollars (\$10) per Pupil, according to the 2003 CBEDS Report, for each school site identified by CDE pursuant to Section 1859.311(a). A minimum allocation of seven thousand five hundred dollars (\$7,500) shall be made for each school site. Once an Apportionment has been made by the Board and the OPSC has received the Certification of Eligibility, funds for eligible school sites will be released by OPSC to the LEA with jurisdiction over the school site(s) along with requirements for the money to be spent at the eligible school site(s) in accordance with Section 1859.313. Any school site not meeting the provisions of Section 1859.311(b) is ineligible for funding under these regulations. Apportionments shall be reduced by the grant amount allocated for ineligible school sites upon receipt of the Certification of Eligibility.

Note: Authority Cited: Section 17592.73, Education Code

Reference: Section 17592.70, Education Code.

### Section 1859.313. Use of Needs Assessment Grant Funds.

The LEA shall only use the Needs Assessment Grant funds for the following:

- (a) Unbudgeted administrative or third party costs incurred as a result of performing the Needs Assessment.
- (b) Repairs identified in Part V of the Form SAB 61-01 at any eligible school site within the LEA where a Needs Assessment has been completed.

Apportionments may be rescinded or reduced by the grant amount provided for each eligible school site where the LEA fails to comply with the provisions of Sections 1859.310 and 1859.315.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

#### Section 1859.314. Qualifications of the Inspector.

The Needs Assessment must be prepared in accordance with all of the following:

- (a) The person(s) performing or supervising the Needs Assessment must have general knowledge of school facilities construction, operation, and maintenance and either of the following:
  - (1) A minimum of three years of experience with cost estimation and building systems life cycle analysis; or
  - (2) An Architect, Engineer, or General Contractor license under California law.
- (b) The person(s) meeting or being supervised by individuals that meet the conditions of (a), above, must personally conduct the assessment on the school site(s).
- (c) The individual(s) performing or supervising the Needs Assessment must be independent third parties and may not be Employee(s) of the LEA with jurisdiction over the school site for which the Needs Assessment is being performed.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.73, Education Code.

#### Section 1859.315. Program Reporting Requirements.

An LEA that receives School Facilities Needs Assessment Grant funds pursuant to Section 1859.312 shall:

- (a) Complete a Certification of Eligibility and submit it to the OPSC. Each LEA shall submit one certification to the OPSC. Fund release(s) shall be processed by the OPSC for all eligible sites upon receipt of the complete signed and dated Certification of Eligibility.
- (b) Complete a Web-Based Progress Report Survey and submit it to the OPSC by April 29, 2005. Each LEA shall submit one survey unless the Needs Assessment for all eligible school sites has been completed pursuant to subsection (c), below:
- (c) Complete a Web-Based Needs Assessment for each applicable site and submit it to the OPSC by January 1, 2006.
- (d) Complete Form SAB 61-02 to report all expenditures made with Needs Assessment Grant funds on an LEA-wide basis and submit it to the OPSC by January 1, 2007.

Note: Authority Cited: 17592.73, Education Code.

Reference: 17592.70, 17592.73, Education Code.

#### Section 1859.316. Needs Assessment Grant Expenditures and Audit.

The projects shall be subject to audit to ensure that expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.313 and 1859.314. Any funds not Expended on the Needs Assessment or eligible repairs at the time of submittal of the Form SAB 61-02 shall be returned to the OPSC.

After the OPSC receives the expenditure report from the LEA on the Form SAB 61-02 and the LEA is notified of an impending Needs Assessment audit, an audit of the expenditures by the OPSC shall commence within six months. The OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information, which may include certifications, for expenditures made pursuant to Section 1859.310 and make a finding that some or all of the expenditures were not made in accordance with the provisions of Section 1859.313, the OPSC shall recommend to the Board that the Apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 30 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.70, Education Code.

Section 1859.317. Duplication of Needs Assessment Grant Expenditures.

If the LEA's expenditures for the Needs Assessment Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

(a) No work or expenditures are duplicated.

(b) After eliminating the work to be funded with the Needs Assessment Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: 17592.73, Education Code.

Section 1859.319. Remaining Needs Assessment Grant Funds.

Any funds unapportioned or returned to the OPSC shall be transferred into the School Facilities Emergency Repair Account.

Note: Authority Cited: Section 17592.73.

Reference: Education Code Section 41207.5.

### Article 3. Emergency Repair Program

#### Section 1859.320. General.

An LEA seeking an Emergency Repair Program Grant for reimbursement of cost for repairs or replacement of existing structural components or building systems that posed a health and safety threat to the pupils or staff while at school, as defined by EC Section 17592.72(c)(1), shall complete and file a Form SAB 61-03. Each application may consist of the repair or replacement of only one building component or system and any work directly related to that repair or replacement.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.321. Eligible Schools.

An LEA that has a school site meeting all of the following is eligible to submit a Form SAB 61-03:

- (a) The school was identified on the list published by the CDE pursuant to EC Section 17592.70(b).
- (b) The school was newly constructed prior to January 1, 2000.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.322. Emergency Repair Program Project Funding Order.

The Board shall fund ERP applications on a monthly basis in the order of receipt of an Accepted Application as follows:

- (a) If sufficient funding is available to provide funding to all applications presented that month, all applications will receive a full and final apportionment of the eligible costs.
- (b) If funding is insufficient in any given month:
  - (1) Apportionments will be provided to each application on a prorated basis with the balance placed on the Unfunded List, unless the proration will result in funding less than 25 percent of the eligible project costs. The proration shall be determined by dividing the total funds available by the total eligible costs of all applications Ready for Apportionment.
  - (2) If the proration, as determined in (1) above, will be less than 25 percent of the eligible project costs, the Board shall provide funding at 100 percent of the eligible project costs based on date order received until funds are no longer available and the remaining applications shall be placed on the Unfunded List.
  - (3) The Board will continue to accept and process applications for the purpose of developing an Unfunded List based on the order of receipt of the Accepted Applications.

When funds become available, projects on the Unfunded List will be apportioned in the order of date received. After an Apportionment has been made by the Board, funds will be released automatically by the OPSC and must be used by the LEA to reimburse the special reserve fund and the original source of funds used to make the expenditures for the ERP project.

Once eight hundred million dollars (\$800,000,000) has been apportioned by the Board, any applications that have received a prorated Apportionment will be deemed a full and final Apportionment, any applications remaining fully unfunded on the Unfunded List will be returned to the LEA, and the Unfunded List shall be dissolved.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.71, Education Code.

### Section 1859.323. Eligible Project Costs.

Reimbursement will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). Reimbursement of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard. Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

### Section 1859.323.1. Replacement Projects

Full reimbursement of eligible replacement costs shall be provided only if it is more cost-effective to replace rather than repair a structural component or building system that poses a health or safety threat to pupils or staff while at school. For purposes of this section, it is more cost-effective to replace a structural component or building system when the estimated cost of an eligible repair is at least 75 percent of the cost of replacement.

If the cost to repair the component or system is less than 75 percent of the current replacement cost and the district elects to replace the component or system, then reimbursement shall be the lesser of either:

- (a) The cost of repair divided by the estimated cost to replace, multiplied by the actual eligible replacement cost; or
- (b) The estimated cost of repair.

If the request is for replacement components or systems, a cost comparison must be prepared and submitted with the Form SAB 61-03 to the OPSC. The cost comparison shall consist of a repair cost estimate and a Like-Kind Material/System replacement cost estimate provided by qualified individual(s) or firm(s).

Replacement of a structural component or building system shall be limited to the use of a Like-Kind Material/System except when the work in the project proposes to use an alternative building material or system which is requested by the LEA and is less costly than a Like-Kind Material/System replacement. The cost comparison must also include the estimated cost of replacement using an alternative building material or system.

If the request is for replacement components or systems that included structural deficiencies, the cost comparison must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect's approval.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

### Section 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:

- (a) New square footage, components, or building systems that did not previously exist.
- (b) Nonessential Repairs.
- (c) Cosmetic Repairs.
- (d) Land acquisition.
- (e) Furniture and equipment.
- (f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.
- (g) Costs covered under warranty or by insurance.
- (h) Costs normally borne by others including, but not limited to, public utility companies.
- (i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.324. Reimbursement.

An Emergency Repair Program Grant shall be used to reimburse LEAs for eligible costs, as defined by Sections 1859.323 and 1859.323.1, that meet all of the following provisions:

- (a) If contracts for services or work were signed for the project, contracts must have been entered into on or after September 29, 2004.
- (b) Expended on or after September 29, 2004 and prior to the submittal of the Form SAB 61-03 to the OPSC.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.325. School Facility Due Diligence.

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.

#### Section 1859.326. Emergency Repair Program Application Expenditures and Audit.

The projects shall be subject to audit to ensure that the expenditures incurred by the LEA were made in accordance with the provisions of Sections 1859.323 through 1859.325, inclusive.

After a final Apportionment has been made, and the OPSC notifies the LEA of an impending ERP audit of the expenditures reported on the Form SAB 61-03, an audit by the OPSC shall commence within six months. The OPSC shall complete the audit within six months of the notification unless additional information requested from the LEA has not been received.

Should the OPSC conduct an audit of the expenditures and information provided by the LEA, which may include certifications, for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of EC Section 17592.72(c) and Regulation Sections 1859.323 through 1859.325, inclusive, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the LEA must submit a warrant for any amount identified as being owed within 30 days of the Board's action. If this does not occur, the OPSC shall initiate collection procedures.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.

#### Section 1859.327. Duplication of Emergency Repair Program Expenditures.

If the LEA's expenditures for the Emergency Repair Program Grant involve proposed work also included in a SFP or DMP project, the LEA must ensure all of the following:

(a) No work or expenditures are duplicated.

(b) After eliminating the work to be funded with the Emergency Repair Program Grant from the SFP or DMP project, the remaining work continues to meet the SFP or DMP requirements.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

#### Section 1859.329. Withdrawal and Amendment of Applications.

In the event an LEA has omitted expenditures from the Form SAB 61-03 at the time of submittal and the project has not received an Apportionment from the Board, the LEA may withdraw its application and resubmit a revised Form SAB 61-03. The resubmitted application shall receive a new processing date by the OPSC. If the Board has already provided an Apportionment for the project, the LEA will not be able to receive additional funding for the project and the Apportionment provided by the Board will be considered full and final.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Sections 17592.72 and 17592.73, Education Code.