

## **FINDING OF EMERGENCY**

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

### **Specific Facts Showing the Need for Immediate Action**

The purpose of the Seismic Mitigation Program (SMP) is to save lives and prevent damage in the most vulnerable school facilities during a seismic event. The SMP was established by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez), which became law on May 20, 2006, and was funded in the amount of \$199.5 million for seismic repair, reconstruction, or replacement of “the most vulnerable” school facilities by Proposition 1D approved by the voters at the November 7, 2006 General Election. However, only three seismic mitigation projects have been approved by the SAB to date, representing State funds in the amount of \$4.7 million. The proposed emergency regulations are necessary to increase program participation so the SAB can apportion the remaining \$194.8 million of State bond funding for the SMP. The emergency amendments expand the list of eligible building structure types from eight to 14, and clarify that eligible structures must have “structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event.”

The emergency amendments eliminate an eligibility criterion that required a “short period spectral acceleration” (ground shaking) of at least 1.68 g based on U.S. Geological Survey maps, and specify that the Division of the State Architect (DSA) must review and approve structural engineer reports that conform to the DSA guidelines under the authority of Education Code Section 17310.

Unacceptable risk of injury from faulting, liquefaction, or landslide must be documented by an engineering geologist’s hazard report in accordance with California Building Code Section 1803A and with the concurrence of the California Geological Survey.

With the recent seismic activity that has occurred and continues to occur in California, not to mention the unexpected earthquake and aftershocks that rocked Japan, it is imperative that these regulations be approved as emergency regulations so that school districts can access the SMP funding for those buildings eligible under the expanded structural criteria. Failure to approve these regulations on an emergency basis will continue the current SMP eligibility criteria that only three school districts have met to receive State funding to protect the lives of school pupils and school district staff. The broader eligibility criteria in the proposed emergency regulations will allow more projects to receive State funding for seismic retrofit work, and will help stimulate the State’s economy by creating various jobs associated with the construction industry. Broader school district participation in this Program will carry out the legislative intent and purpose by protecting lives and preventing damage to the most vulnerable Category 2 school buildings in the event of seismic activity. There have been numerous recent projects considered by the SAB that could have been funded under the SMP but because of the current program limitations, these projects were not eligible to receive SMP funding. Therefore, the proposed emergency regulatory amendments are necessary to allow school districts access to the SMP funds in order to protect lives.

## **Authority and Reference Citations**

Authority: Sections 17070.35, 17075.15, and 17078.64 of the Education Code.

Reference: Sections 17074.56, 17075.10 and 101012(a)(1) of the Education Code and Section 53311 of the Government Code.

## **Informative Digest/Policy Overview Statement**

Senate Bill 50, Chapter 407, Statutes of 1998, established the School Facility Program which streamlined funding processes, eliminated State oversight, and made school districts more accountable for their projects. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were adopted by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SMP was established by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/ Nunez), which became law on May 20, 2006, and was funded in the amount of \$199.5 million for seismic repair, reconstruction, or replacement of “the most vulnerable” school facilities by Proposition 1D approved by the voters at the November 7, 2006 General Election. The SAB initially adopted regulations at its September 27, 2006 meeting to implement the program which were approved by the OAL [File No. 2008-0318-02S] and filed with the Secretary of State, with an effective date of April 30, 2008.

The SAB, at its August 26, 2009 meeting, approved emergency amendments to the SFP Regulations to promote broader participation by school districts in the SMP. The emergency regulations were approved by the OAL [File No. 2009-1119-03E] and filed with the Secretary of State on November 24, 2009. The OAL approved the Certification of Compliance [File No. 2010-0401-01C] on May 6, 2010. In those emergency regulations and in order to increase SMP participation, the SAB reduced the 1.70 g ground shaking threshold to 1.68 g for program eligibility, and added four more building types as eligible for funding:

- C1B . . . Reinforced Concrete Cantilever Columns with Wood Roofs,
- PC1 . . . Precast/Tilt-up Concrete Shear Wall with Concrete Floor and Roof Diaphragms,
- PC2A . . . Precast Concrete Frame without Concrete Shear Walls and with Rigid Floor and Roof Diaphragms, and
- C3A . . . Concrete Frame with Infill Masonry Shear Walls and Flexible Floor and Roof Diaphragms.

The SAB, at its June 22, 2011 meeting, adopted emergency regulatory amendments that expand the list of eligible building structure types from eight to 14, and clarify that eligible structures must have “structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event.”

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed emergency amendments change the definition of “Most Vulnerable Category 2 Buildings” as follows:

- Deletes that this term is “as defined by the DSA”;
- Deletes the criterion of a short period spectral acceleration (ground shaking threshold) of 1.68 g based on U.S. Geological Survey maps;
- Deletes that a structural engineer report must be provided regarding the lateral force resisting system, collapse prevention performance objectives, and potential for catastrophic collapse (this criteria is modified and re-stated in Regulation Section 1859.82); and
- Clarifies and expands eligible structure types from eight to 14 as follows:
  - C1 - Concrete Moment Frame,
  - C1B - Reinforced Concrete Cantilever Columns with ~~Wood Roofs~~ Flexible Diaphragms,
  - C2A - Concrete Shear Wall with Flexible Diaphragms.
  - C3A - Concrete Frame with Infill Masonry Shear Walls and Flexible ~~Floor and Roof~~ Diaphragms,
  - PC1 - Precast/Tilt-up Concrete Shear Wall with ~~Concrete Floor and Roof~~ Flexible Diaphragms,
  - PC1A - Precast/Tilt-up Concrete Shear Wall with ~~Flexible Roof~~ Rigid Diaphragms,
  - PC2A - Precast Concrete Frame without Concrete Shear Walls and with Rigid ~~Floor and Roof~~ Diaphragms,
  - PC2 - Precast Concrete Frame and Roofs with Concrete Shear Walls,
  - URM - Unreinforced Masonry Bearing Wall Buildings,
  - RM1 - Reinforced Masonry Bearing Wall with Flexible Diaphragms.
  - URMA - Unreinforced Masonry Bearing Wall with Rigid Diaphragms.
  - S1B - Steel Cantilever Columns with Flexible Diaphragm.
  - S3 - Steel Light Frame Metal Siding and/or Rod Bracing, or
  - M - Mixed construction containing at least one of the above structures types.

Existing Regulation Section 1859.82 establishes the criteria a district must meet to be eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. The proposed emergency amendments add five new subsections described as follows:

New Subsection (a)(1)(C) sets forth four requirements for seismic mitigation funding:

- The construction contract was executed on or after May 20, 2006 (the effective date of AB 127) (deleted earlier in this section and re-stated here);
- The project funding shall be for the minimum work necessary to obtain DSA approval (deleted earlier in this section and re-stated here);
- The building is designed for occupancy by students and staff (deleted from Regulation Section 1859.2, Definitions, and re-stated here);
- The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code Section 1803A and with the concurrence of the California Geological Survey.

New paragraph under Subsection (a)(1)(C) requires that the structural engineer's report shall conform to the guidelines prepared by the DSA, in accordance with EC Section 17310.

New Subsection (a)(1)(D) requires that notwithstanding Regulation Sections 1859.93 (Modernization Project Funding Order) and 1859.93.1 (New Construction Project Funding Order), all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an approved application for funding.

New Subsection (a)(1)(E) specifies that if eligible seismic mitigation funding applications cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the SMP authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.

The last new paragraph requires that for any seismic mitigation funding application not apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans), the application shall be returned to the applicant.

### **Mandate on Local Agencies or School Districts**

The Executive Officer of the SAB has determined that the proposed emergency 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 emergency regulations.

### **Cost Estimate**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.