

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 22, 2011

SEISMIC MITIGATION PROGRAM REGULATORY AMENDMENTS

PURPOSE OF REPORT

1. To present proposed amendments to the School Facility Program (SFP) regulations for the Seismic Mitigation Program (SMP) as directed by the State Allocation Board (Board) at the May 25, 2011 meeting.
2. To request authorization to file the proposed regulation amendments with the Office of Administrative Law (OAL) on an emergency basis.

DESCRIPTION

At its May 2011 meeting, the Board approved program amendments to the SMP and directed Staff to bring back conforming regulations. This item provides the conforming regulations for Board adoption.

AUTHORITY

Education Code Section 17075.10(a) states, "A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event."

BACKGROUND

In March 2011, the Board established the Seismic Mitigation Sub-Committee (Committee) to consider program changes to increase participation in the SMP. The Committee met in March, April and May of 2011 and presented its recommendations for full Board consideration at the May 2011 Board meeting.

At the May 2011 meeting, the Board adopted the recommendations from the Committee to amend the SMP criteria as follows:

1. The project must contain a building with any "Category 2" construction type as defined in Assembly Bill (AB) 300.
2. The building must be designed for occupancy by students and staff.
3. The project must have an accompanying structural engineer's report identifying the building deficiencies and reasoning for concluding that the building has a potential for catastrophic collapse in a seismic event, including, but not limited to, ground shaking, liquefaction, landslide or other identified risks.
4. The district must have obtained the DSA concurrence with the structural engineer's report to establish program eligibility.

The Board requested that Staff return to the Committee to determine conforming regulatory amendments and subsequently return to the Board for adoption of the regulations.

On June 9, 2011, the Committee met to discuss the proposed regulatory amendments.

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STAFF COMMENTS

At the June 2011 meeting, the Committee discussed the regulatory amendments proposed by Staff. Committee members and stakeholders provided feedback, and Staff has incorporated the direction of the Committee into the regulations provided on the Attachment.

Committee members reached consensus on the general concepts outlined in the regulation amendments with the exception of the language in Regulation Section 1859.82(a)(1)(E) related to returning applications once bond authority for the SMP has been exhausted. The Committee requested that Staff include the topic of an unfunded list for the SMP as a part of this item.

Prior Board Discussions on the Creation of an Unfunded List for SMP Projects

The concept of creating an unfunded list for SMP projects has been a topic of discussion at the September 2007 and August 2009 Board meetings. In both of those meetings, Board members expressed concerns regarding the generation of an unfunded list when the bonding authority for the SMP has been exhausted. Specifically, there was a question of whether assembling a list of facilities that have been determined to be subject to catastrophic collapse in a seismic event may expose districts and the State to liability. In addition, eligibility for seismic funding in future bonds may change, leaving projects on the unfunded list ineligible for funding. The Board did not want to presuppose what the legislature would do in the future or tie the hands of the legislature or the Board. At the August 2009 meeting, the Board declared that there would be no unfunded list beyond the bonding authority.

The concerns raised in previous discussions on this topic remain valid. In addition, it may be premature to have a discussion on the creation of an unfunded list for a program that currently has approximately 97 percent of bond authority remaining. The proposed regulatory amendments included in this item are an attempt to incite greater program participation as minimal funding requests have been submitted since the bond funds became available in 2006. Regardless of the outcome of this discussion, it is important to reiterate that an unfunded list does not constitute a guarantee or commitment of future State funding.

Committee Discussion on the Creation of an Unfunded List

At the June 9, 2011 Committee meeting, members and stakeholders discussed the creation of an unfunded list for SMP projects in a similar fashion as previous unfunded lists for new construction and modernization programs. Historically, the Board has maintained an unfunded list for new construction and modernization projects when the bond authority has been exhausted.

For the first time since the inception of the SFP, Proposition 1D (approved by California voters in 2006) authorized up to \$199.5 million in bond authority specifically for seismic mitigation. Since the SMP projects pose an unacceptable threat to pupils, they are vastly different from new construction and modernization projects that build new classrooms or modernize older facilities. The creation of an unfunded list for new construction and modernization does not constitute a potential liability to the state. In contrast, the health and safety nature of the SMP projects does present a potential liability to the state and should be treated differently than prior unfunded lists.

RECOMMENDATIONS

1. Adopt the proposed amendments to the regulations on the Attachment and begin the regulatory process.
2. Authorize the Acting Executive Officer to file these regulations with the OAL on an emergency basis.

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BOARD ACTION

In considering this Item, the State Allocation Board (SAB) approved the staff's recommendations, which would 1) allow the SAB to adopt the proposed amendments to the regulations and begin the regulatory process; and 2) authorize the Acting Executive Officer to file these regulations with the Office of Administrative Law on an emergency basis. The SAB also approved the modification (double underscored language) to proposed Regulation Section 1859.82(a)(1)(E), which was read into the record and reads as follows:

“(E) If an Application . . . the applicant may accept the remaining funding amount either reduce their request to 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 Seismic Mitigation Program 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.”

In addition and once the emergency regulations are in effect, the SAB directed staff to report back, on a monthly basis (through the Executive Officer's Statement), and provide an update on activity for the Seismic Mitigation Program.

ATTACHMENT

Section 1859.2. Definitions.

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

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~~"Most Vulnerable Category 2 Buildings," as defined by the DSA, means the building is located where the short period spectral acceleration is 1.68 g or more based on the 2002 United States Geological Survey National Seismic Hazard Maps adjusted for site class factors; the building is designed for occupancy by students and staff; the building type is either meets the criteria outlined in Section 1859.82(a)(1)(C) and is one of the following building types:~~

~~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 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,~~

~~C3A – Concrete Frame with Infill Masonry Shear Walls and Flexible Floor and Roof Diaphragms, or~~

~~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; and a structural report is provided by a structural engineer that demonstrates the lateral force resisting system of the building does not meet collapse prevention performance objectives and the specific deficiencies and reasoning for concluding that the building has a potential for catastrophic collapse.~~

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Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.75, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17074.30, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17078.72(k), 17079, 17079.10, 17280, 56026, and 101012(a)(8), Education Code; Section 53311, Government Code; and Section 1771.5, Labor Code.

Section 1859.82. Facility Hardship.

A district is 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. A facility hardship is available for:

- (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:
 - (1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the DSA to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding for

seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is \$199.5 million ~~for projects where the construction contract was executed on or after May 20, 2006, and the project funding provided shall be for the minimum work necessary to obtain DSA approval.~~

- (A) If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83 (e) or a grant not to exceed 50 percent of the cost estimate that has been reviewed and approved by the OPSC and approved by the board for seismic rehabilitation.
- (B) If the request is for replacement facilities that included structural and/or seismic deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain DSA approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the DSA. For seismic deficiencies of the Most Vulnerable Category 2 Buildings, the report and the cost estimate for the minimum work necessary must be reviewed by the DSA.
- (C) The seismic mitigation projects must meet all of the following requirements:
1. The construction contract was executed on or after May 20, 2006;
 2. The project funding provided shall be for the minimum work necessary to obtain DSA approval;
 3. The building is designed for occupancy by students and staff; and
 4. 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.

The structural engineer's report shall conform to the guidelines prepared by the DSA, in accordance with Education Code Section 17310.

- (D) Notwithstanding Sections 1859.93 and 1859.93.1, 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.
- (E) If an Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings 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 either reduce their request to 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 Seismic Mitigation Program 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.

For any Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings not apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) pursuant to this Section, the application shall be returned to the applicant.

(2) The classroom or related facility was lost or destroyed as a result of a disaster such as fire, flood or earthquake and the district has demonstrated satisfactorily to the Board that the classroom or related facility was uninsurable or the cost for insurance was prohibitive.

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

Reference: Sections 17074.56, 17075.10, 17075.15 and 101012(a)(1), Education Code.