

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
May 1, 2009

150 Percent Regulation/
60 Percent Commensurate Requirement

PURPOSE

To present information and to discuss the following School Facility Program (SFP) Regulations:

- The 150 Percent Regulation, SFP Regulation 1859.51(i)(7)
- The 60 Percent Commensurate Requirement, Part 22 of the *Application for Funding* (Form SAB 50-04)

BACKGROUND

SFP Eligibility

At the October 2008 State Allocation Board (SAB) meeting, the Board requested Office of Public School Construction (OPSC) Staff to bring a discussion of both the 60 Percent Commensurate Requirement and the 150 percent Regulations to the Implementation Committee for discussion.

Eligibility is a fundamental component of the SFP new construction program. The law requires that districts establish their new construction eligibility based on a one-time classroom count. Eligibility is the net difference between a district's five year projected enrollment and its existing classroom capacity. For example, if a district has a five year projected enrollment of 500 pupils, but only has a capacity for 400 pupils based on the State loading standards, the district would have a positive eligibility baseline of 100 pupils. Since SFP funding is tied to a per pupil grant amount, eligibility is a district asset and a State liability. It represents the State's obligation to provide funding to build additional classrooms for a district's unhoused pupil capacity. Undercounting classroom capacity will inflate eligibility and the corresponding State liability.

Senate Bill (SB) 50 of 1998 (Greene) enacted Education Code (EC) Section 17071.75, which established how new construction eligibility would be generated and maintained. The bill only addressed how eligibility would be reduced based on classrooms provided in State funded projects. It did not consider locally funded projects in adjusting a district's classroom capacity.

Assembly Bill (AB) 695 (Chapter 858, Statutes of 1999- Mazzoni) amended the EC Section 17071.75 to include locally funded projects and required the SAB to adjust the new construction baseline eligibility by the number of pupils for which facilities were provided from any State or local funding source after the existing school building capacity was initially determined. For purposes of determining the number of pupils for which facilities were provided, the EC requires use of the pupil loading formula set forth in Section 17071.25. AB 695 ensures that any additional classrooms built after the baseline is established by the SAB are counted in order to ensure that a district's housing needs have been adequately met.

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The 150 Percent Regulation

The SAB approved amendments to SFP Regulation, Section 1859.51 to implement AB 695. The amended regulations state that a district's new construction eligibility will be reduced by the number of pupils housed in any State or locally funded classroom purchased or leased by the district after the baseline eligibility was determined by the SAB. The Regulation provides a list of classrooms that are excluded from this requirement. Specifically, the Regulation listed the following exclusion, known as the 150 percent regulation.

Section 1859.51 Adjustments to the New Construction Baseline Eligibility

...

The baseline eligibility for new construction determined on the Form SAB 50-03, will be adjusted as follows:

...

(i) Reduced by the number of pupils housed, ..., in any Classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:

...

(7) included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving a new construction grant (rounded up) for the SFP project."

The Regulation was amended by the State Allocation Board on January 26, 2000.

Section 1859.51(i)(7) allows districts to undercount the classroom capacity in apparent contradiction to the statute amended by AB 695. This regulation allows districts to build 150 percent of the capacity of a project without reducing eligibility to account for the additional classroom capacity built, i.e., classrooms can be built for 150 students while eligibility is reduced by only 100 pupils, based on the loading standards set forth in the EC.

The following steps clarify the current implementation of the 150 Percent Regulation. Prior to January 2007, the SAB made adjustments to school districts' baselines for the added capacity beyond 150 percent of a project after the final close-out for a project. In January 2007, the SAB began making the adjustment at the same time the funding application was approved, in order to ensure school districts are aware of their current new construction baseline eligibility.

The 150 percent adjustment for a new construction project:

- 1) The number of pupils requested is multiplied by 150 percent;
- 2) This number is divided by the State loading standard depending on the grade level of the classrooms in the project¹. This quotient derives the number of classrooms needed to house the number of pupils requested. Any remainder is rounded up to the next whole classroom;
- 3) The classroom number derived in step two is subtracted from the overall number of classrooms in the project to identify classrooms in excess of 150 percent of capacity.
- 4) The excess classrooms are multiplied by the State loading standard to identify how much eligibility, if any, is to be reduced;
- 5) The number in step 4 then reduces the district's new construction eligibility.

¹ State loading standards are determined pursuant to Education Code Section 17071.25(a)(2). K-6 grade level classrooms are loaded at 25, 7-12 grade level classrooms are loaded at 27, non-severe Special Day Class (SDC) classrooms are loaded at 13, and severe SDC classrooms are loaded at 9 pupils per classroom.

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Example 1

Here is a calculation for a project requesting 65 pupil grants that consists of four elementary school (K-6) classrooms with a pupil capacity of 100, would be as follows:

65 pupils requested x 150 percent = 97.5

97.5 divided by 25 = 3.9 classrooms. This number is rounded up to 4 classrooms.

4 minus 4 = 0

0 multiplied by 25 = 0

The district's eligibility is only reduced by the 65 pupil grants claimed – not by the classroom capacity of 100.

Example 2

Here is a calculation for a project requesting 110 pupil grants that consists of ten elementary school (K-6) classrooms with a pupil capacity of 250, would be as follows:

110 pupils requested x 150 percent = 165

165 divided by 25 = 6.6 classrooms. This number is rounded up to 7 classrooms.

10 minus 7 = 3

3 multiplied by 25 = 75

The district's eligibility is reduced by the 110 pupil grants claimed plus an additional 75 pupil grants for a total of 185 pupil grants.

60 Percent Commensurate Requirement

The 60 Percent Commensurate Requirement requires the district's Architect of Record to demonstrate that the proposed construction costs in a new construction project are at least 60 percent of the combined State and local funding for the project.

The SAB unanimously adopted the 60 Percent Commensurate Requirement in June, 1999. The Requirement was created to address concerns that some districts were requesting per-pupil new construction grants based on a district proposed construction plan that was considerably less than the State grant and local matching share for the project, which created vast savings for school districts. Under the SFP, non-financial hardship districts can expend any savings from State funded projects on other high priority capital facility projects of the district.

The 60 Percent Commensurate Requirement was also created to uphold statutory requirement of EC Section 17072.30(a), which stipulates that districts must match State funds, "in an amount at least equal to the proposed apportionment" (EC Section 17072.30(a)). For example, a district seeking \$500,000 would need to match with \$500,000, totaling \$1 million for the State plus the district match. The district's architect would need to submit cost estimates to the Division of the State Architect (DSA) demonstrating \$600,000 in hard construction costs. This standard allows up to 40 percent in non-construction or "soft" costs related to the project.

Districts with projects not meeting the 60 Percent Commensurate Requirement have the following two options:

- 1) A district may reduce its funding request by either (a) reducing the number of pupil grants requested, or (b) reducing the number of supplemental grants, if applicable. Supplemental grants may include a geographic percent factor grant, new school allowance, small size project grant, urban/security/impacted site grant, site development, general site development, fire alarm/fire sprinkler grant, and/or a multi-level construction

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grant. These grants are intended to assist the State in fulfilling its obligation to house the students in the classrooms of a given project. According to EC, Section 17072.20, a district may request all or a portion of the funding for which the school district is eligible. In short, a school district can request funding within the constraints of meeting its statutory obligation to match the funds.

- 2) A district may revise the scope of the project so the estimated costs are 60 Percent Commensurate with the grants. For example, a district may add a minimum essential facility to the project, or it may construct permanent buildings instead of portable buildings.

Discussion of 60 Percent Commensurate Requirement

The 60 Percent Commensurate Requirement is a vital component of the SFP, as it ensures districts are meeting the statutory requirement to provide a matching share towards their construction projects. Once the district has made all expenditures associated with the construction costs, the remaining apportionment amount allows for other soft costs, including the costs associated with planning, testing, inspection, furniture and equipment. A non-financial hardship district may retain the savings declared on a project which may be used for other high priority facilities needs because the district has already demonstrated the project is 60 percent commensurate. The 60 Percent Commensurate Requirement should not be amended because it ensures the SFP statutory requirement is met.

The 150 Percent Regulation does not appear to be in conflict with the 60 Percent Commensurate Requirement. If a project does not meet the 60 Percent Commensurate Requirement then districts may choose one of the two options listed in the Background section of this item. The baseline eligibility is adjusted based on the number of classrooms in the SFP project, with the exception of those classrooms excluded under the 150 Percent Regulation.

AUTHORITY

SB 50 of 1998 (Greene) enacted the Leroy F. Greene School Facilities Act. EC Section 17071.75 established how new construction eligibility would be generated and maintained.

AB 695 of 1999 (Mazzoni) amended EC Section 17071.75 to require that all classrooms “provided from any State and Local funding source after the existing school building capacity is determined” be added to a district’s capacity. The bill required reductions to be made from a district’s eligibility for any classrooms that were State funded or locally funded after the baseline was established.

The SAB has the authority to establish regulations in its administration of the SFP under the rulemaking provisions of the California Administrative Procedure Act in accordance with State and federal constitutional requirements of due process and equal protection- requiring fairness and rationality. Such regulations must be consistent with, and comply with, statutes granting that authority.

SFP Regulation Section 1859.51 indicates adjustments to the new construction baseline eligibility.

The *Application for Funding* (Form SAB 50-04), which is a part of the SFP Regulations, requires the project’s architect to certify that the estimated construction cost of the work in the plans and specifications “is at least 60 percent of the total grant amount provided by the State and the

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district's matching share, less site acquisition costs. This cost estimate does not include site acquisition, planning, tests, inspection, or furniture and equipment..."

EC Section 17070.63 stipulates that the total funding provided shall constitute the state's full and final contribution to the project and for eligibility for state facilities funding represented by the number of unhoused pupils for which the school district is receiving that state grant. As a condition of receipt of funds, a school district shall certify that the grant amount, combined with local funds, shall be sufficient to complete the school construction project for which the grant is intended. Any savings achieved by the district's efficient and prudent expenditure of these funds shall be retained by the district in the county fund for expenditure by the district for other high priority capital outlay purposes.

EC Section 17072.30(a) states that subject to the availability of funds, and to the determination of priority pursuant to Section 17072.25, if applicable, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 50 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to the proposed apportionment pursuant to this chapter, prior to release of the state funds.

EC Section 17072.20(a) stipulates that an applicant school district that has been determined by the board to meet the eligibility requirements for new construction funding set forth in Article 2 (commencing with Section 17071.10) or Article 3 (commencing with Section 17071.75) may submit at any time a request to the board for a project apportionment for all or a portion of the funding for which the school district is eligible.

Attachment

The chart below shows a side by side comparison of the EC and the resulting amended SFP Regulations.

	SENATE BILL 50	ASSEMBLY BILL 695
Education Code (EC) Section 17071.75	(b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided pursuant to this chapter after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10).	b) Add the number of pupils that may be adequately housed in the existing school building capacity of the applicant district as determined pursuant to Article 2 (commencing with Section 17071.10) to the number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined pursuant to Article 2 (commencing with Section 17071.10). For this purpose, the total number of pupils for which facilities were provided shall be determined using the pupil loading formula set forth in EC Section 17071.25.
SFP Regulation Section 1859.51	<p>The baseline eligibility for new construction... will be adjusted as follows:</p> <p>a) Reduced by the number of pupils provided in a new construction SFP project.</p> <p>(b) Reduced by the number of pupils housed, based on the loading standards pursuant to EC Section 17071.25(a)(2), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.</p> <p>(c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to EC Section 17071.25(a)(2), in a modernization SFP project.</p>	<p>The baseline eligibility for new construction... will be adjusted as follows:</p> <p>(a) Reduced by the number of pupils provided grants in a new construction SFP project and by the number of pupils that received a Preliminary Apportionment pursuant to Section 1859.140 or a Preliminary Charter School Apportionment pursuant to Section 1859.162.2.</p> <p>(b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in a new construction LPP project funded under the provisions of the LPP pursuant to Sections 1859.12 or 1859.13.</p> <p>(i) Reduced by the number of pupils housed, based on loading standards pursuant to Education Code Section 17071.25(a)(2)(A), in any classroom Provided after the baseline eligibility was determined by the Board with the exception of those pupils housed or to be housed in a classroom:</p> <p>(7) That is included in a SFP project where the district has funded a portion of the project beyond its required district contribution and the pupil capacity of the classroom does not exceed 150 percent of the number of pupils receiving new construction grants (rounded up) for the SFP project.</p>