

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814
<http://www.opsc.dgs.ca.gov>



Date: July 3, 2009

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on **Thursday, July 16, 2009** from 9:30 a.m. to 3:30 p.m. in the Legislative Office Building located at 1020 "N" Street, Room 100, Sacramento, California. (*Location subject to change.*)

The Implementation Committee's proposed agenda is as follows:

- 1) Convene Meeting
- 2) Revised Partial 2009 Implementation Committee Meeting Calendar
Discuss calendar revisions resulting from State furloughs
- 3) 60 Percent Commensurate and 150 Percent Regulations
Continue discussion on the 60 Percent Commensurate and 150 Percent Regulations.
- 4) Accessibility and Fire Code Requirements for Modernization Projects
Resume discussion from the November 2008 meeting regarding proposed regulatory amendments to the Accessibility and Fire Code grant allowance.

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Sue Genera at (916) 445-4320.

A handwritten signature in cursive script that reads "Susan Ronnback".

SUSAN RONNBACK, Chairperson
State Allocation Board Implementation Committee

Individuals who need auxiliary aids for effective participation are invited to make their requests and preferences known to Sue Genera at (916) 445-4320 five days prior to the meeting.

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE

Pending Items List
July 16, 2009

A. Future Items

- Career Technical Education Facilities Program Improvements
 - Financial Hardship Program
 - Joint-Use Program
 - Role of the Implementation Committee
 - Alternative Education Loading Standards and Funding
 - Improvements to School District Appeal Request form
 - Process Improvements for Facility Hardship
-

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

June 5, 2009

Legislative Office Building
Sacramento, CA

Members Present

Susan Ronnback, SAB (Chair)

Juan Mireles, OPSC/SAB

Masha Lutsuk, OPSC/SAB

Fred Yeager, CDE

William Savidge, CASH

Mamie Starr, CCESSA (Alternate for Kenn Young)

Margie Brown, CASBO

Robert Pierce, SSD

Mark DeMan, LAUSD

Richard Conrad, DSA

Chris Ferguson, DOF (AM only)

Lettie Boggs, CEFPP (Alternate for Dennis Dunston)

Gary Gibbs, CBIA

Dean Tatsuno, AIA

Members Absent

Cesar Diaz, SBCTC

Debra Pearson, SSSA

The meeting was called to order at 9:41 am.

Minutes

An audience member asked that a minor change be made to the minutes for the May 1, 2009 Implementation Committee (IMP) meeting.

Opening Remarks

Ms. Susan Ronnback introduced herself as Interim Assistant Executive Officer (AEO) of the State Allocation Board (SAB), and announced that the deadline for applications for the permanent AEO position is June 12, 2009.

The Chair announced that the newly formed SAB Rules and Regulations Subcommittee will establish some ground rules regarding the Implementation Committee, and stated that the Rules and Regulations Subcommittee is open to input on this topic. The Chair also proposed that an issue tracking document, to include a summary of the issues raised during discussion of an item be added to the analysis of each item. In addition, the Chair requested that for each item, a target date for presentation before the SAB be included in the analysis. In response to an inquiry, the Chair remarked that work on the Audits Subcommittee will begin in the near future.

AB 127 Grant Adjustments – Analysis of Project Information Worksheet Data*Overview:*

OPSC staff member Josh Rosenstein presented an item on the methodology for analyzing project data provided via the Project Information Worksheet (PIW).

Discussion Points:

Concern was expressed by the Chair that there has not yet been a recommendation presented to the SAB regarding the grant adjustment methodology. The Chair suggested that an Information Item be added to the June 24th SAB Agenda to update the Board on the IMP discussions to date and to solicit Board direction on how they would like staff to proceed in

developing a methodology for determining the required AB 127 adjustment to the per pupil grants. A committee member responded that it was important to allow the time for input on the methodology in order to ensure the quality of the data.

A committee member inquired as to why PIWs with State contribution reported in error would be excluded, as outlined in the item. It was suggested that these errors be corrected instead. The OPSC responded that these would be excluded because the errors often indicated data was being reported for a different project. It was pointed out that a percentage of error would be allowed to account for adjustments due to increases by the Board and other allowable reasons that could cause districts to report slightly different amounts.

Concern was expressed by a committee member that there would not be enough data to work with if too many PIWs were excluded due to errors. It was suggested that districts be contacted to correct any identified errors. Additionally, contacting the districts and letting them know what errors were made would help them better understand how to complete the PIW in the future. OPSC staff responded that an attempt was made to contact a sample of districts without much success. It was determined that it would take a substantial amount of time for districts to research the issues and respond to the OPSC; therefore, in order to streamline the process, Staff would not contact districts during this particular analysis. Staff informed the attendees that for the future, a triage system was being developed and additional on-line instructions had been implemented to address these issues. Staff also indicated an expectation that information will be more accurate in the future as districts become more familiar with completing the PIW.

An inquiry was made by a committee member as to where savings should be reported on the PIW, with regards to savings from a different project that were being applied to the current project. Several other audience members expressed that this was a common issue with the PIW. OPSC Staff responded that savings applied to a project should be reported as the district match on the PIW.

A concern was expressed by an audience member that information was requested on the PIW that either the OPSC already had access to, or that was not necessary in determining how construction costs have changed. Additionally, a comment was made that much of this information was not going to be used in the actual analysis presented in the item. There was a concern from the audience that districts needed to know why the information was being requested. OPSC Staff responded that the additional information is necessary because it could provide possible answers as to why some projects were over or under-funded. With regards to the information the OPSC had access to, this is useful because it acts as a form of checks to ensure the districts reported information for the correct project.

Comments were made that the data provided on the PIW would be more accurate as the project got closer to completion. There were several comments from audience and committee members that the PIW was required to be submitted too frequently and should only be submitted when the project is 95 to 100 percent complete. It was argued that this would resolve many of the current issues with the PIW as data provided would be actual data versus estimates, and districts would take the time to ensure the form was completed correctly. The OPSC noted a benefit in using estimates as these PIWs represent newer projects rather than projects that were bid some time ago. A comment was made that the PIW data for projects that are 95 to 100 percent complete is often more accurate because it is actual data, however, it is historical and can often represent a four year lag period. It was suggested that it would be better to use a Lee Saylor type of report versus the PIW. The OPSC responded that Staff is proposing to look at the information provided over a period of time in order to depict any trends. More recent data could be weighed differently than older data.

An inquiry was made by an audience member as to whether Financial Hardship projects that were not going to be included in the analysis would still have to follow the PIW submittal

guidelines. The OPSC responded that current regulations [Regulation Section 1859.71 and PIW Instructions] require the submittal at three different times, but that in the future this may be an area for possible regulatory change.

An audience member inquired as to whether the analysis was going to be transparent. The OPSC responded in the affirmative, stating that a summary would be provided, and any additional information would be made available upon request.

There was a discussion regarding the use of PIW information for bond accountability, the Governor's Executive Order, EO S-02-07, and the interpretation of bond accountability requirements. It was suggested that the Order had referred to State agencies being accountable for the quality of infrastructure and that OPSC had taken on a different interpretation. It was suggested that the OPSC be audited, rather than the districts. Additionally, several attendees questioned the role of the PIW. The OPSC responded that the PIW was approved by the Board and that bond accountability was part of the discussion when it was adopted.

An audience member suggested that different criteria be used for analysis since the recommendation for the grant adjustment amount was already six months overdue. The consideration of a recent report prepared by UC Berkeley was suggested.

It was suggested that if Special Day Class (SDC) and certain Financial Hardship projects' PIWs will be excluded from the analysis, districts should not have to submit PIWs for them. OPSC Staff responded that the exclusion of the Financial Hardship projects was requested by the attendees of past IMP Committee meetings and that the SDC projects were excluded because the Board does not have the authority to make an adjustment to the SDC grants; only those for K-12. Staff offered that these projects could still be analyzed for informational purposes. The OPSC requested that the discussion regarding the submittal requirements for these projects be brought up in a separate discussion about the PIW itself and not the methodology, as current regulations require that the PIW be submitted for these projects.

A committee member commented that the development process of the PIW was not collaborative and that the objections and concerns expressed by many stakeholders were ignored during its creation. It was requested that a workgroup be put together to work on the PIW revisions. The OPSC responded that a workgroup could be an option in the future.

Inquiries were made as to whether the OPSC could be ready to make a recommendation to the Board now for 2009 grant adjustments. OPSC Staff responded that this depended on the progress of the discussions for the proposed methodology.

An audience member suggested that the PIW is a flawed document that should be abandoned entirely and replaced with a different process; the audience member referenced the UC Berkeley study as a potential resource. The OPSC responded that the PIW does have value in the information it provides. The OPSC added that starting over would add additional time to the process, and having someone else perform the study could take away from the collaborative process.

Comments were made concerning whether requiring the PIW can be considered a mandate or is a condition of receiving bond funds.

An audience member suggested using a standard deviation methodology to determine a mean cost per square foot. This would account for differences in project types and costs. This could be computed yearly to determine a percentage change in costs year to year. The Board could then compare this percentage change to the Construction Cost Index increase to determine if an additional increase should be given. Additionally, this could be used to study the adequacy

of the grants by comparing the dollar per square foot to the pupils to come up with an adequate per pupil grant amount. This would require construction cost and square footage information for the project and would be easier than requesting all the information on the PIW. OPSC Staff responded that the additional information on the PIW is necessary to answer questions as to why some projects were over or under-funded, but added that they were proposing to use both a square footage and bell curve method in the analysis.

An audience member asked for clarification as to whether existing facilities should be included in the data requested on the PIW in the section regarding outdoor facilities. It was suggested that the current instructions are confusing and do not clarify what is wanted. OPSC Staff responded that the data provided should only apply to facilities that are included in the current project and that this had been clarified in the additional on-line instructions. The audience member suggested that Staff take into account that this section could have substantial errors when analyzing the data. The OPSC responded that Staff would check for errors in this section.

Concern was expressed by a committee member that including Financial Hardship projects that were only Financial Hardship at the Design phase could skew the analysis as these projects are often scaled down at the design phase with savings applied to a second phase or addition project. OPSC Staff stated that these projects could be analyzed separately if they represent a large enough sample size.

An audience member inquired as to what Staff planned to do if the analysis did not result in a normal distribution, with regards to the bell curve methodology. The OPSC responded that there currently was not an alternate plan, but that it would still be important to show the distribution so that the Board members could see the big picture to help them make their decision.

Concern was expressed about including projects that under-requested pupil grants in the analysis as the dollar per square foot data for these projects could skew the data. It was argued that under-requested projects often consisted of portable classrooms versus permanent. Several comments were made that the grant was not intended to build portable classrooms and that districts were often forced to build portables because of the inadequacy of the grant; including them in the study would perpetuate this inadequacy. OPSC Staff responded that there were several reasons a district may under-request pupil grants (such as insufficient new construction eligibility) and it would not be possible to make a general statement. Additionally, an inventory of the projects could be given to the Board showing how many portable projects were in the analysis. The challenge was that there was only one grant to fund all types of projects; therefore, the analysis had to be representative of the projects it funded.

An audience member suggested taking model schools, as identified by CDE, which represent quality and efficiency and see how much it costs to build those schools.

The Chair summarized the main issues raised during the discussion and inquired as to what the committee wanted presented to the Board. A committee member suggested that the information from the PIW be presented to the Board along with other methods for determining the adjustment. Additionally, it was stated by an audience member that a full disclosure of the strengths and weaknesses of the PIW should be provided. The OPSC responded that in order to conduct the analysis, the methodology needs to be finalized so that a solid recommendation can be presented to the Board.

A committee member requested that projects on each side of the bell curve distribution as well as in the middle be analyzed. OPSC Staff responded that this was included in the proposal. Additionally, this was part of the study that required the additional project information requested on the PIW.

An inquiry was made about the use of a scattergram, as mentioned at a previous meeting. OPSC Staff replied that this concept was taken into consideration but was found to be too difficult as it is not possible to analyze more than two factors at a time. Instead, it was proposed to show the results as a whole and then break out highlights of subgroups as supplements.

Next Steps:

An informational item on this topic will be presented at the June SAB meeting, and an item may be presented at the July IMP meeting, depending on the guidance from the Board.

60 Percent Commensurate and 150 Percent Regulations

Overview:

OPSC staff members Josh Damoth and Tim Hegedus presented an item to review the 150 Percent rule and 60 Percent Commensurate requirement. The Chair summarized her understanding of the key points from the previous Committee meeting and then opened the item up for discussion.

Discussion Points:

Audience and Committee members discussed the OPSC's change in the practice of adjusting a school district's eligibility pursuant to the 150 Percent regulation at the time of audit, to making the adjustment at the time of apportionment, beginning in 2007. One concern was that the OPSC did not properly inform school districts of the procedural change. Staff stated that the OPSC does have mechanisms in place for announcing changes, but acknowledged that this change could have been communicated more effectively.

An audience member also expressed concern that this procedural change was a violation of Administrative Procedure Act requirements, and that the issue should have been brought before the SAB. The OPSC responded that the issue was discussed when an appeal related to the 150 Percent rule was heard by the SAB last year. Staff also stated that, at that time, the Board agreed with the OPSC's interpretation and application of the 150 Percent rule.

An audience member stated that the 60 Percent Commensurate requirement, which mainly affects districts with portable classroom addition projects, is problematic since these lower-cost projects do not require as much funding and therefore require a reduction to the pupil grant request. A concern was expressed that, rather than reducing the pupil grants requested to meet the 60 Percent Commensurate requirement, districts may add unneeded work to projects to ensure maximum funding.

An audience member expressed the opinion that the OPSC's interpretation of the 150 Percent regulation language is problematic and overly conservative, and that Education Code language is intended to be interpreted liberally. Another audience member raised concern that the regulations as approved by the Office of Administrative Law are more stringent than what was approved by the SAB. There was discussion regarding whether the current regulation language is clear. OPSC Staff stated that, considering the variety of interpretations, the regulations should be revised for clarity.

It was suggested by some audience members that School Facility Program (SFP) Regulation section 1859.51(i)(7) ought to remain unchanged, but should be interpreted in such a way that adjustments pursuant to section (i) apply only to locally-funded projects. It was further suggested that adjustments pursuant to the 150 Percent rule only apply to SFP projects when a district spends more than its matching share.

Next Steps:

An item for continued discussion on this topic will be presented at the next Implementation Committee meeting.

Adjournment and Next Meeting

The meeting adjourned at 3:41 p.m. The next IMP meeting is scheduled for Friday, July 10, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.

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**Implementation Committee
2009 MEETING CALENDAR****January 2009 - Cancelled****Thursday, July 16, 2009**

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Thursday, February 19, 2009

California State Capitol
10th Street and Capitol Mall, Room 4202
Sacramento, California

Thursday, August 6, 2009

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Thursday, March 12, 2009

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Thursday, September 3, 2009

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Friday, April 3, 2009

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Thursday, October 1, 2009*

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Friday, May 1, 2009

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Thursday, November 5, 2009

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

Friday, June 5, 2009*

Legislative Office Building
1020 N Street, Room 100
Sacramento, California

December 2009 – Only if Necessary

* Please note: this meeting may be rescheduled to a location outside of Sacramento.

*Meeting times are scheduled from 9:30 am to 3:30 pm with a 1-hour lunch break.
Meeting times, dates and locations are subject to change.*

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
July 16, 2009

60 PERCENT COMMENSURATE AND 150 PERCENT REGULATIONS

CHANGES FROM THE JUNE 5, 2009 IMPLEMENTATION COMMITTEE ITEM

This item was presented at the June 5, 2009 Implementation Committee Meeting. In response to the discussion that ensued, the item now contains the following revisions:

- A table has been added summarizing the policy issues raised at the **May 1** and **June 5, 2009** Implementation Committee Meetings.
- Each policy question included in the discussion section now includes the Office of Public School Construction (OPSC) Staff's analysis **and** questions and/or concerns that were raised by Committee and/or audience members.
- The item includes a third option for revising School Facility Program (SFP) Regulation Section 1859.51(i)(7) based on input from audience members at the June 5, 2009 Implementation Committee meeting.
- Additional explanation has been added into the OPSC Staff's analysis for the first two options for revising the SFP Regulation Section 1859.51(i)(7).

Summary of Policy Issues Discussed at the May 1 and June 5, 2009 Implementation Committee Meetings	
May 1, 2009	<p><u>150 Percent Regulation</u></p> <ul style="list-style-type: none"> • Should the adjustment be made at the same time as the project approval or during the time of audit for the project? • The current regulation has different interpretations and may be misaligned with EC Section 17071.75(b). • Does the EC provide authority for school districts to preserve eligibility in the baseline for other purposes, such as Minimum Essential Facilities? <p><u>60 Percent Commensurate Requirement</u></p> <ul style="list-style-type: none"> • Concerns were raised that the 60 Percent Commensurate Requirement prevents districts from retaining savings that could later be used to construct non-classroom facilities. • Concerns were raised about the interaction and whether there is a potential conflict between the 60 Percent requirement and the 150 Percent rule.
June 5, 2009	<p>In addition to the above, the following issues were raised:</p> <p><u>150 Percent Regulation</u></p> <ul style="list-style-type: none"> • Concerns were raised that the OPSC did not inform districts of the procedural change related to the 150 Percent Regulation that occurred in 2007, which was to take the 150 Percent adjustment during the project apportionment instead of during the project audit. • Some audience members suggested that SFP Regulation Section 1859.51(i)(7) should be interpreted in such a way that adjustments pursuant to section (i) apply only to locally-funded projects. It was further suggested that adjustments pursuant to the 150 Percent rule only apply to SFP projects when a district spends more than its matching share.

PURPOSE

At the **May 1** and **June 5, 2009** Implementation Committee meetings, the Committee requested a continued discussion of the 150 Percent Regulation and the 60 Percent Commensurate Requirement [SFP Regulation Section 1859.51(i)(7) and Part 22 of the *Application for Funding* (Form SAB 50-04)].

BACKGROUND

Overview of Staff's Presentation at the May 1, 2009 Implementation Committee Meeting

At the **May 1, 2009** Implementation Committee meeting, OPSC Staff presented a brief overview of new construction eligibility and two major legislative bills [Senate Bill (SB) 50 – Greene (Chapter 407, Statutes of 1998) and Assembly Bill (AB) 695 – Mazzoni (Chapter 858, Statutes of 1999)] and the corresponding regulatory amendments that established how the new construction eligibility was calculated and maintained. Staff explained how AB 695 amended the EC Section 17071.75(b) to require an ongoing accounting of facilities provided from any State or local funding source, based on the pupil loading formula set forth in EC Section 17071.25.

Staff explained how the 150 Percent Regulation, which was approved by the State Allocation Board (SAB), was included as a part of the overall regulation package to implement AB 695. The 150 Percent Regulation allows certain classrooms constructed in a SFP project to be excluded from being counted in a school district's ongoing inventory. Using two examples, Staff clarified how the 150 Percent Regulation is currently being applied.

After discussing the 150 Percent Regulation, Staff opened a discussion of the 60 Percent Commensurate Requirement, which was created to uphold the 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." A district's Architect of Record is required to demonstrate that the proposed hard construction costs in a new construction project are at least 60 percent of the combined State and local funding for the project.

DISCUSSION

Discussion of Policy Issues Related to the 150 Percent Regulation and the 60 Percent Commensurate Requirement

Staff noted the following issues raised at the **May 1** and **June 5, 2009 Implementation Committee meetings** that the Committee may wish to continue discussing:

Question 1: Should the adjustments for added classroom capacity beyond 150 percent of the pupil grants requested be made at the time of project funding or during the audit of the project?

OPSC Analysis: The adjustment for added classroom capacity beyond 150 percent of the pupil grants requested should be made at the time of project apportionment.

- Ensures that districts are aware of their new construction eligibility so that projects can be planned accordingly.

- Avoids leaving “phantom” eligibility in school districts’ baselines that would show a need to build additional classroom capacity that does not exist.
- SFP projects can take up to seven years to be completed.
- AB 695 requires an accurate accounting of school districts’ facilities needs (based on the State classroom loading standards). EC Section 17071.75(b) requires that the new construction baseline eligibility be reduced by the number of pupils housed in any State or locally funded project. Because of the seven years it can take to complete an SFP project, this adjustment was taken up front so school districts are aware of their current eligibility.

Concerns/Questions from Committee/Audience Members:

- One concern was that the OPSC did not properly inform school districts of the procedural change that began in 2007, when the OPSC began the practice of adjusting a school district’s eligibility at the time of apportionment instead of at the time of audit. Staff acknowledged that there are mechanisms in place for communicating to school districts, and that the change could have been communicated more effectively.
- Committee and audience members were concerned that the existing regulation approved by the OAL was being misinterpreted and that the adjustment should be taken at the time of audit. This was because of the language within the Regulation “where the district has funded a portion of its project beyond the required district contribution”. Concerns were raised that the amount of local funding contributed must be determined before the 150 percent adjustment can be taken. Staff stated that the SAB confirmed the current practice of taking adjustments at the time of project apportionment at the October 2008 SAB meeting. The provisions of EC Section 17071.75(b) require an accurate accounting of the district’s school building capacity and the State’s corresponding liability to provide funding to build facilities based on the pupil loading formula set forth in EC Section 17071.25.

Next Steps/Actions to Be Taken

Continue discussion with the Implementation Committee to determine whether the 150 percent regulation may be rewritten to provide clarification. See Question 2.

Question 2: Should the existing regulation, which is difficult to interpret, be rewritten to be aligned with EC Section 17071.75(b)?

OPSC Analysis: SFP Regulation Section 1859.51(i)(7) is misaligned with EC Section 17071.75(b) and the SAB may consider approving a revision to the Regulation to reconcile it with the provisions of this Section of EC. As an alternative, the SAB may consider approving a revision to clarify the Regulation.

Concerns/Questions from Committee/Audience Members:

Several audience members opined that the EC Section 17071.75(b) and SFP Regulation Section 1859.51(i)(7) should be interpreted in such a way that adjustments pursuant to section (i) apply only to locally-funded projects. It was further suggested that adjustments pursuant to the 150 Percent rule only apply to SFP projects when a district spends more than its matching share. Option 3 has been added to address these concerns.

Next Steps/Actions to Be Taken

Discuss the options presented and seek input from the Implementation Committee.

*Question 2: **Option 1:** Align with the EC. Offset Based on Project Capacity.*

- Revise SFP Regulation Section 1859.51(i)(7) to be aligned with the provisions of EC Section 17071.75. The baseline would accurately reflect the district's housing needs and the State's liability to provide 50 percent of the necessary new construction funding to house a school district's pupils.
- The following are considerations under Option 1:
 - This option is the most straightforward interpretation of statute.
 - Ensures that a school district's baseline eligibility accurately reflects the pupil housing needs of a district according to the State loading standards.
 - Easy to implement and track the number of facilities constructed in a SFP new construction project.
 - All pupils housed in a SFP project would count towards an adjustment to the SFP new construction eligibility.

Regulation changes needed for Question 2: *Option 1:*

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:

- (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.~~ in accordance with Education Code Section 17071.75(b).
- ...
- (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:
 - ...
 - ~~(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 a new construction grant (rounded up) for the SFP project.~~
 - ...
 - (s) Reduced 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.

*Question 2: **Option 2:** 150 Percent Up-Front Adjustment.*

- Revise SFP Regulation Section 1859.51(i)(7) to clarify the Regulation and to align it with what was approved by the SAB in January 2000. After the SAB initially approved the 150 percent regulation, the language was revised during the public comment period and the revised language was approved by the OAL. The resulting language created confusion as to the interpretation of the regulation. At the October 2008 SAB meeting,

the OPSC provided the SAB with Staff's existing interpretation of the 150 percent regulation as approved by the OAL, and the SAB confirmed Staff's interpretation.

- The following are considerations under Option 2:
 - This option is aligned with what was approved by the SAB in January 2000 and upheld in an appeal in October 2008.
 - Increases the State liability. The new construction baseline eligibility may inaccurately reflect unhoused pupils for pupils that are already housed.
 - Easy to implement and track the number of facilities included in a SFP project.
 - For SFP apportioned projects, the new construction baseline is only reduced by eligibility requested, unless the capacity of the project is greater than 150 percent (rounded up) of the pupil grants requested. If the pupil grants requested exceed 150 percent of the project capacity, then an additional adjustment is made for the additional capacity added, regardless of the local contribution.

Regulation changes needed for Question 2: **Option 2:**

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:

- (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.
- ...
- (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:
- ...
- (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 a new construction grant (rounded up) for the SFP project.

Question 2: Option 3: No Adjustment for 50/50 Projects. 150 Percent Adjustment at Project Audit for Projects with Additional Local Contribution.

- Revise SFP Regulation Section 1859.51(i)(7) based on input from the June 5, 2009 Implementation Committee meeting. After the SAB initially approved the 150 percent regulation, the language was revised during the public comment period. The resulting language that was approved by the OAL caused confusion as to how the Regulation should be interpreted. Members from the audience at the June 5, 2009 meeting provided their interpretation of the Regulation as approved by the Office of Administrative Law (OAL) and the intent of the language that was added after the public comment. Under this option, the new construction eligibility is only reduced by the number of pupil grants requested, and districts may construct an unlimited number of classrooms provided they do not spend a dollar more than the State plus the district matching share. If the costs of the project exceed the State grant plus the district's required matching share, an additional adjustment is made for the additional capacity added above 150 percent of the project capacity.

- The following are considerations under Option 3:
 - This option is misaligned with the Statute.
 - Increases the State liability. The new construction baseline eligibility inaccurately reflects unhoused pupils for pupils that are already housed.
 - Difficult to implement because it requires the adjustment to be made after all the expenditures for the project are made.
 - Leaves “phantom” eligibility in school districts’ baselines that would show a need to build additional classroom capacity that could be reduced at the time of audit.
 - This option can only be implemented with corresponding changes to the *Expenditure Report* (Form SAB 50-06). Currently, the Form does not contain adequate information in order for the OPSC to determine if a school district has spent beyond the State plus the district matching share.

Question 3: Does EC Section 17071.75 provide authority for school districts to preserve eligibility in the baseline for other purposes, such as Minimum Essential Facilities (MEFs)?

OPSC Analysis: The EC section requires an ongoing accounting of the number of pupils for whom facilities were provided from any State or local funding source according to the State loading standards for classrooms. K-6 classrooms are loaded at 25 pupils, 7-12 classrooms are loaded at 27 pupils, and Special Day Class non-severe and severe classrooms are loaded at 13 and 9 pupils, respectively. The baseline eligibility must be reduced based on the number of pupils housed.

- Districts may incorporate MEFs in their new construction projects. However, there is no provision in the Statute for districts to preserve eligibility.
- The existing 150 percent regulation allows districts to preserve eligibility for up to 150 percent of the capacity of an SFP project. In fact, because of how this calculation is rounded, districts can sometimes preserve up to 200 percent of the project capacity. Regulation Section 1859.77.3 allows districts with inadequate MEFs to request a “Use of Grants” to divert their available pupil grants towards constructing an adequate MEF.

Concerns/Questions from Committee/Audience Members:

Committee and audience members stated that the SFP grants are intended to fund MEFs in addition to classrooms, and that a district should be able to complete a small project that adds classrooms and preserve the eligibility not needed to request funding for a MEF at a later time.

Next Steps/Actions to Be Taken

Continue discussion with the Implementation Committee to determine how districts may utilize their eligibility to construct MEFs.

Question 4: Does the 150 percent regulation penalize school districts that only have a local match to build portable classrooms (generally small, slow-growth districts), where the 60 percent commensurate requirement forces them to lower the grants requested?

OPSC Analysis: The 150 percent regulation provides flexibility to school districts so that they may request fewer pupil grants than the actual capacity of an SFP project. Under this regulation, they may preserve eligibility for up to 150 percent of the project's capacity (rounded up).

- This concern stems from the fact that districts don't have enough eligibility to have a large enough project to enhance their facilities (adding MEFs, etc.).
- EC Section 17071.75 does not provide flexibility for preserving eligibility. It requires that the baseline eligibility be reduced directly based on the number of classrooms constructed in a SFP project.
- The SAB approved the 150 percent regulation to grant some districts flexibility when planning an SFP project. Eligibility in the baseline is preserved, and districts may request a "Use of Grants" to construct a MEF if there is an inadequate facility.

Concerns/Questions from Committee/Audience Members:

Committee and audience members said that many small districts either do not have a local match, or have only a small pool of eligibility from which to draw, and therefore cannot complete large enough construction projects to build MEFs. In cases where the capacity of the project exceeds 150 percent of the grants requested, the new construction eligibility for these districts would be deducted.

Next Steps/Actions to Be Taken

Continue discussion of the 150 percent regulation and the 60 percent commensurate requirement.

Examples that illustrate the relationship between the 60 percent commensurate requirement and the 150 percent rule.

Committee members requested to continue discussion of potential conflicts between the 150 percent regulation and the 60 percent commensurate requirement.

Staff is providing the following two examples of real projects where the 150 Percent Rule was applied:

Question 4: Example 1:

In this example, the District lowered its pupil grant request in order for the project to meet the 60 Percent Commensurate requirement. A resulting 150 percent adjustment was necessary because the actual number of students housed was 135.

Information taken from the original *Application for Funding* (Form SAB 50-04) submittal:

Scope of Project	Add five relocatable single-room classroom buildings to an existing high school site.
Pupil Capacity of Project	135 high school students
Estimated Cost of Project	\$594,393
Pupil Grants Requested/Corresponding State Plus District Match	42 grants/ \$1,040,220
60 Percent Commensurate	\$594,393 < (60%) (\$1,040,220) Fail

A 15-day letter was mailed to the District, presenting options for proceeding with the application:

- Option 1: Lower the pupil grants requested to 39 pupils so that the project is 60 Percent Commensurate.
- Option 2: Lower the supplemental and Excessive Cost Hardship Grants requested.
- Option 3: Add to the scope of the project. The District could possibly add additional core facilities that are needed or redesign the project to build permanent classrooms. (The District would need to withdraw the application and resubmit once the new plans are approved by the Division of the State Architect.)

In addition, the 15-day letter addressed that the classroom capacity of the project exceeded 150 percent of the pupil grants requested (rounded up) and therefore an adjustment was required.

The District submitted a revised *Application for Funding* (Form SAB 50-04) lowering the pupil grants requested. Here is the information taken from the revised *Application for Funding* (Form SAB 50-04) submittal:

Scope of Project	Add five relocatable single-room classroom buildings to an existing high school site.
Pupil Capacity of Project	135 high school students
Estimated Cost of Project	\$594,393
Pupil Grants Requested/Corresponding State Plus District Match	39 grants/ \$988,234
60 Percent Commensurate	\$594,393 > (60%) (\$988,234) Pass

The project now passed the 60 Percent Commensurate test. However, the pupil capacity of the project (135) was greater than 150 percent of the pupil grants requested (39). Therefore, the following adjustment was made by the SAB for the added capacity beyond 150 percent of the pupils requested:

39 pupil grants requested x 150 percent = 58.5

58.5 divided by 27 = 2.17 classrooms. This number is rounded up to 3 classrooms, which is the maximum the District could build without accounting for the additional capacity.

5 minus 3 = 2 classrooms of additional capacity.

2 multiplied by 27 = 54 pupil grants

The District's eligibility is reduced by the 39 pupil grants claimed, plus an additional 54 pupil grants for a total of 93 pupil grants.

Because the actual capacity of the project is 135 students, the 150 Percent Rule allowed the District to "preserve" 42 pupil grants in its baseline eligibility, including the additional three pupil grants the district preserved by lowering its request from 42 to 39 pupil grants.

Alternatively, the district could have declined all or some of the supplemental and Excessive Cost Hardship grants requested to meet the 60 Percent Commensurate and to preserve a greater amount of eligibility. Had the District requested 55 pupil grants rather than 39, the district would only have lost 82 pupil grants based on the 150 percent calculation.

55 pupil grants requested x 150 percent = 82.5

82.5 divided by 27 = 3.06 classrooms. This number is rounded up to 4 classrooms, which is the maximum the District could build without accounting for the additional capacity.

4 minus 3 = 1 classroom of additional capacity.

1 multiplied by 27 = 27 pupil grants

The District's eligibility is reduced by the 55 pupil grants claimed, plus an additional 27 pupil grants for a total of 82 pupil grants.

Question 4: Example 2:

This example shows a district with four projects that required a 150 percent adjustment.

- The table illustrates the magnitude of the savings generated if the 60 Percent Commensurate Requirement was not in place. If not for this regulation, low cost projects would violate EC Section 17072.30(a) and the district's matching share requirement would not be met. Further, there would be a strong economic incentive for districts to opt to use portable classrooms to generate savings to apply to other projects.
- The District provided additional capacity greater than 150 percent of the pupil grants requested. The chart also illustrates the 150 percent adjustment that was made to the District's new construction baseline eligibility.

	With 60 % Commensurate Regulation				Without 60 % Commensurate Regulation*		
Class-rooms in Project	Pupils Requested	State Plus District Matching Share	Capacity Overbuilt	Pupil Grants Charged for 150 Percent Adjustment	Pupils Requested (Based on Pupils Housed)	State Plus District Matching Share	Savings
4	29	\$793,456	345%	50	100	\$2,096,078	\$1,302,622
3	32	\$770,574	234%	25	75	\$1,558,848	\$788,275
8	65	\$1,398,170	308%	100	200	\$3,683,520	\$2,285,350
4	48	\$1,091,650	208%	25	100	\$2,048,772	\$957,122
Totals:							\$5,333,368

*This scenario cannot actually happen. It illustrates the amount of savings that could be generated by school districts if the 60 Percent Commensurate Requirement was not in place.

Note that the District could have avoided conflict with the 150 Percent rule by reducing the Excessive Cost Hardship and other supplemental grants taken and increasing the pupil grant request. For example, in the last project on the chart, the District could have taken 51 pupil grants instead of 48. By requesting 51 grants, the District could have built 196 percent of actual capacity over claimed capacity with the pupil grants requested, with no further adjustment to its eligibility. This is accomplished because of the way the 150 Percent Regulation says to always round up.

AUTHORITY

Chapter 407, Statutes of 1998 (SB 50 – Greene) enacted the Leroy F. Greene School Facilities Act. EC Section 17071.75 established how new construction eligibility is generated and maintained.

Chapter 858, Statutes of 1999 (AB 695 – 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 authorizes 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 hard 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 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>

**STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
July 16, 2009**

ACCESSIBILITY AND FIRE CODE REQUIREMENTS ON MODERNIZATION PROJECTS

PURPOSE

To discuss proposed amendments to the School Facility Program (SFP) regulations to replace the three percent option with the 60 percent minimum work necessary option for accessibility and fire code requirements under the Excessive Cost Hardship Grant.

BACKGROUND

Date/Meeting	Overview of Report	Outcome
August 2006 SAB	<ul style="list-style-type: none"> • The Office of Public School Construction (OPSC) staff presented to the State Allocation Board (SAB) amendments to the SFP Section 1859.83(f) to allow school districts the option to choose an allowance based on three percent of the base grant or 60 percent of the minimum work necessary to meet accessibility and fire code requirements. • The report included the methodology and calculations for how the 60 percent option was determined and how the maximum grant cap under the 60 percent option was determined. • The OPSC staff recommended SAB approve the regulation amendments. 	The SAB approved the OPSC staff recommendations to allow school districts the option to choose an allowance based on three percent of the base grant or 60 percent of the minimum work necessary to meet accessibility and fire code requirements on a trial basis for one year with a goal to determine the best way to provide funding for costs of accessibility and fire code requirements compliance.
August 2008 SAB	<ul style="list-style-type: none"> • The OPSC staff reported to the SAB the results of a data analysis based on the amendments to the SFP regulations. • The report included one full year of data from projects that received an allowance for accessibility and fire code requirements from August 2007 to July 2008. • A substantial amount of Districts chose the 60 percent option over the three percent option. Districts that took advantage of the 60 percent option received a significant increase in funding for over the three percent option. 	The SAB accepted the report from OPSC staff and requested staff to draft amended regulations to remove the three percent option for the accessibility and fire code requirements under the Excessive Cost Hardship Grant and keep the 60 percent option.

Date/Meeting	Overview of Report	Outcome
November 2008 IMP	<ul style="list-style-type: none"> • The OPSC staff proposed draft regulations for the accessibility and fire code requirements under the Excessive Cost Hardship Grant to replace the three percent option with the 60 percent option. • The OPSC staff presented to the Implementation (IMP) Committee background information and data on modernization projects that received an allowance for accessibility and fire code requirements from August 2007 to July 2008. 	<ul style="list-style-type: none"> • The IMP Committee requested OPSC staff to gather additional data, and present at the December 2008 IMP meeting. • The IMP requested additional data analysis to look at projects that are replacement of like kind.
December 2008 IMP	No report on this issue was presented.	The IMP Committee Chair announced that the OPSC staff intended to return to the IMP in approximately six months with additional data.

AUTHORITY

SFP Regulation Section 1859.79.2(a) states that Modernization Grant Funds may not be used for new building areas. However, it can be used for replacing building areas of like kind and building areas required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

SFP Regulation Section 1859.83(f)(1) currently allows for a Modernization Excessive Cost Hardship Grant for accessibility and fire code requirements. Districts have the option of selecting either three percent of the Modernization Grant or funding based on the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA.

For projects constructed pursuant to SFP Regulation Section 1859.79.2(a) (replacement building area of like kind), SFP Regulation Section 1859.83(f)(2) allows for a Modernization Excessive Cost Hardship grant for accessibility and fire code requirements equal to three percent of the Modernization Grant.

STAFF COMMENTS

At the August 2008 SAB meeting, after reviewing the data presented in the staff report, the SAB requested the OPSC to provide proposed amendments to SFP Regulation 1859.83(f) to discontinue the three percent funding option for the accessibility and fire code grant allowance.

Based on feedback from the November IMP meeting, where stakeholders expressed concern for projects that consist of replacement building area of like kind construction, the OPSC has drafted additional proposed amendments to SFP Regulation Section 1859.83(f). These

amendments would allow districts the opportunity to receive a three percent increase to the base grant if there is replacement building area of like kind in their projects. For projects that include both replacement building area of like kind and other modernization work, districts would be able to choose either the three percent option or the 60 percent option.

Staff is presenting proposed amendments to SFP Regulation Section 1859.83(f) as shown in Attachment A and to Form SAB 50-04 shown in Attachment B to add the option for projects that contain replacement building area of like kind construction. Additionally, staff is presenting proposed amendments to SFP Regulation Section 1859.83(f) as shown in Attachment C and to Form SAB 50-04 shown in Attachment D to discontinue the three percent option entirely.

OPTION 1:

Amend the regulations as outlined in Attachment A and B to discontinue the three percent option for projects without replacement building area of like kind construction.

Allow projects with replacement building area of like kind construction the opportunity to select the three percent increase to the base grant or the 60 percent option if the project contains both replacement building area of like kind construction and other modernization work.

PROS:

- Districts with replacement building area of like kind projects would be eligible for a three percent increase vs. receiving no funding at all.
- Districts with replacement building area of like kind projects have the ability to select either the 60 percent option or the three percent option, but not both. The option selected by the district would depend on the amount of accessibility and fire code requirement upgrades being done to facilities that are not replacement building area of like kind construction.

CON:

Additional funds will be provided under the three percent option without verification of actual construction costs.

OPTION 2:

Amend the regulations as outlined in Attachment C and D to discontinue the three percent option entirely.

PROS:

- This option is consistent with the Board's direction.
- This option would allow for ease of administration.

CONS:

- Districts with replacement building area of like kind projects would not be eligible for a three percent increase or the 60 percent option.
- Districts with replacement building area of like kind projects would only be eligible for the 60 percent option if they have Accessibility and Fire Code Requirement upgrades being done to facilities that are not replacement building area of like kind.

ATTACHMENT A

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

- (f) Excessive cost due to accessibility and fire code requirements:
- (1) The district is eligible for a Modernization Excessive Cost Hardship Grant equal to ~~three percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, the district has the option of requesting~~ 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):
 - (A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.
 - (B) Determine the difference of 1. minus 2.:
 - 1. Multiply the pupils requested in the application by the New Construction Grant.
 - 2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
- (2) In lieu of funding provided in (1), projects that contain replacement building area of like kind constructed pursuant to Section 1859.79.2(a)(1) in addition to other modernization work may request be provided a Modernization Excessive Cost Hardship Grant equal to either three percent of the Modernization Grant or 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B).
- (3) In lieu of funding provided in (1), projects that consist exclusively of replacement building area of like kind pursuant to Section 1859.79.2(a)(1) are eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.
- ~~(3)~~ (4) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
- (4) (5) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$14,400 for each additional stop of the new elevator required in (3) above if the Approved Application was received on or before April 29, 2002.
 - (B) \$10,800 for each additional stop of the new elevator required in (3) above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

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

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Attachment B
50-04 Instructions

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Section 6

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

If the request includes funding for accessibility and fire code requirement pursuant to Section 1859.83(f), the DSA approved list of the minimum accessibility work required and a detailed cost estimate for the work in the plans, [unless the project includes replacement building area of like kind and the district has selected the three percent option according to Regulation Section 1859.83\(f\)\(2\) or 1859.83\(f\)\(3\).](#)

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7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction, Modernization or Charter School Facility Program Rehabilitation Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for accessibility requirements are allowed only if required by the Division of the State Architect (DSA). ~~At the district's option, t~~The district may request ~~three percent of the modernization base grant or enter~~ [60 percent of the amount calculated pursuant to Regulation Section 1859.83\(f\)\(1\), or when both replacement building area of like kind and other modernization exist, the district may request either three percent of the modernization base grant or 60 percent of the amount calculated pursuant to Regulation Section 1859.83\(f\)\(1\).](#) Projects that consist exclusively of replacement building area of like kind may request three percent of the Modernization Grant. Attach a copy of the DSA approved list that shows the minimum work necessary for accessibility requirements.

50-04 Form

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Section 6

Modernization or Charter School Facility Program Rehabilitation Only

- Rehabilitation/Mitigation [Section 1859.83(e)]: \$ _____
- Geographic Percent Factor: _____ %
- Accessibility/Fire Code
 - 3 percent of base grant; ~~or,~~
 - 60 percent of minimum work \$ _____
- Number of 2-Stop Elevators: _____
- Number of Additional Stops: _____
- Small Size Project
- Urban/Security/Impacted site

ATTACHMENT C

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

- ...
- (f) Excessive cost due to accessibility and fire code requirements:
 - (1) ~~The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three 60 percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, The district has the option of may requesting 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):~~
 - (A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.
 - (B) Determine the difference of 1. minus 2.:
 1. Multiply the pupils requested in the application by the New Construction Grant.
 2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
 - ~~(2) Projects constructed pursuant to Section 1859.79.2(a)(1) may be provided a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.~~
 - ~~(3) (2) The district is eligible for a Modernization Excessive Cost Hardship Grant of:~~
 - (A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
 - ~~(4) (3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:~~
 - (A) \$14,400 for each additional stop of the new elevator required in ~~(3)~~ (2) above if the Approved Application was received on or before April 29, 2002.
 - (B) \$10,800 for each additional stop of the new elevator required in ~~(3)~~ (2) above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

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

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Attachment D
50-04 Instructions

Page 1 of 9
Section 6

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

If the request includes funding for accessibility and fire code requirement pursuant to Section 1859.83(f), the DSA approved list of the minimum accessibility work required and a detailed cost estimate for the work in the plans, [unless the project is a replacement building area of like kind.](#)

Page 4 of 9

7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction, Modernization or Charter School Facility Program Rehabilitation Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for accessibility requirements are allowed only if required by the Division of the State Architect (DSA). ~~At the district's option, t~~The district may request ~~three percent of the modernization base grant or enter~~ 60 percent of the amount calculated pursuant to Regulation Section 1859.83(f). Attach a copy of the DSA approved list that shows the minimum work necessary for accessibility requirements.

50-04 Form

Page 7 of 9

7. Excessive Cost Hardship Request

Modernization or Charter School Facility Program Rehabilitation Only

- Rehabilitation/Mitigation [Section 1859.83(e)]: \$ _____
- Geographic Percent Factor: _____ %
- Accessibility/Fire Code
 - ~~3 percent of base grant; or,~~
 - (60 percent of minimum work) \$ _____
- Number of 2-Stop Elevators: _____
- Number of Additional Stops: _____
- Small Size Project
- Urban/Security/Impacted site

ATTACHMENT E

BACKGROUND AND DATA ANALYSIS RESULTS

The Modernization Accessibility and Fire Code Requirements Grant:

The steps in applying for an accessibility and fire code requirements grant allowance, when submitting a complete modernization funding application are as follows:

- A district submits a completed access compliance and/or fire life safety checklist to the DSA for approval.
- The DSA approved checklist(s) is then submitted by the district along with a complete modernization funding application to the OPSC.
- The SAB approves the application and provides an unfunded approval or an apportionment.

Accessibility and Fire Code Compliance:

The Modernization Excessive Cost Hardship Grant for accessibility and fire code compliance is based on estimated construction costs as reported by the district on the access compliance and/or fire life safety checklist. These costs must represent the minimum work necessary to receive approval from the Access Compliance Unit of the DSA. The grant is calculated by taking the accessibility and fire code requirements compliance costs and subtracting seven percent of the sum of the State and district share of the project's modernization base grant.

If the construction costs of a modernization project exceed 50 percent of the building replacement cost, the building must be brought into compliance with the current building code as part of the Title 24 requirements. Therefore, the maximum a district can receive for access compliance is the difference between the new construction base grant (which represents approximately 50 percent of the replacement cost) and the sum of the State and district share of the modernization project's base grant. The chart below illustrates how the Excessive Cost Hardship Grant cap is calculated based on one pupil grant, how the seven percent is applied, and how the three percent option is determined:

1) Calculation of Maximum Grant (Cap)—Based on One Elementary Pupil

State and District Share of New Construction Base Grant at 50%		State and District Share of 100% Modernization Base Grant		Maximum Grant Allowable for Accessibility and Fire Code Requirements
\$9,369	-	\$5,947	=	\$3,422

2) Examples of 60 Percent Calculation of the Excessive Cost Hardship Grant

If the Minimum Accessibility and Fire Code Work Verified by DSA is:		7% of State and District Share of Modernization Base Grant		Difference		Excessive Cost Hardship Grant at 100%
\$2,000	-	\$416	=	\$1,584		\$1,584
\$5,000	-	\$416	=	\$4,584		\$3,422 (cap)
\$350	-	\$416	=	- \$66		\$0

3) Example of 3 Percent Calculation

State and District Share of 100% Modernization Base Grant		3% increase of the State and District Share of Modernization Base Grant		Excessive Cost Hardship Grant at 100%
\$5,947	x	3%	=	\$178

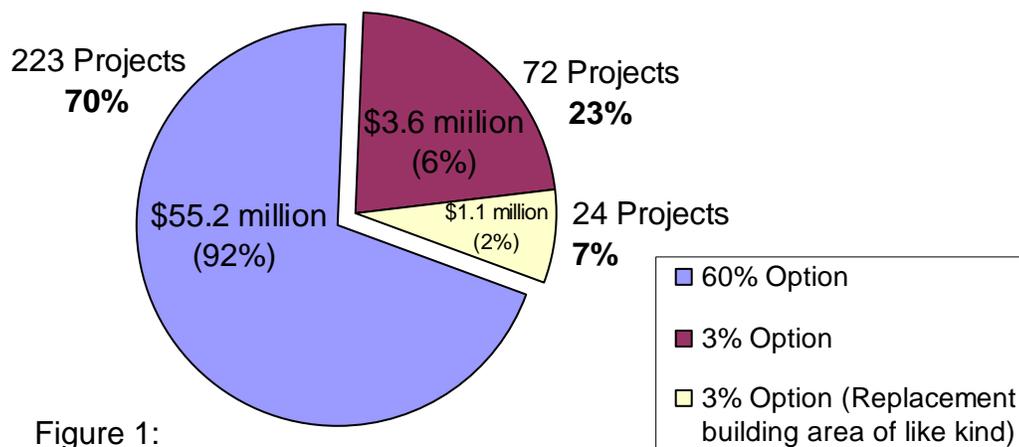
Modernization projects that consist of replacement of buildings with like-kind facilities instead of modernizing them are eligible for an Excessive Cost Hardship Grant equal to three percent of the modernization base grant. Replacement building area of like kind means facilities are demolished and replaced with new facilities of the same square footage. It is not possible to itemize compliance costs in replacement projects because the items are already embedded in the overall building design.

From August 2007 to December 2008 (16 months), a total of 319 modernization applications received a grant apportionment that included an Excessive Cost Hardship Grant for accessibility and fire code requirements. Using this data, OPSC staff conducted an analysis and identified the following findings:

1. Data Analysis: Modernization Projects with an Accessibility and Fire Code Grant Allowance

Over the past 16 months, 223 out of 319 modernization projects (70 percent) received the Excessive Cost Hardship Grant allowance for accessibility and fire code requirements under the 60 percent option versus the three percent option. The SAB apportioned a total of \$59.9 million for accessibility and fire code requirements under the Excessive Cost Hardship Grant. Of this amount, \$55.2 million (92 percent) was allotted to projects that chose the 60 percent option, \$3.6 million (six percent) was allotted to projects that selected the three percent option and did not contain replacement building area of like kind, and \$1.1 million (two percent) was allotted to projects that selected the three percent option and contained replacement building area of like kind. Figure 1 illustrates the type of option selected by districts and the amount of apportionments provided.

Modernization Projects/Apportionment for the Accessibility and Fire Code Grant Allowance



2. Data Analysis: No 60 Percent Option

The apportionment for 223 projects that selected the 60 percent option totaled \$55.2 million. If only the three percent option had been available during this period, the districts would have received only \$9.4 million versus \$55.2 million for the minimum work necessary for accessibility and fire code requirements. Figure 2 shows how districts benefit from the 60 percent option for accessibility and fire code requirements.

What If The 60 Percent Option Did Not Exist?

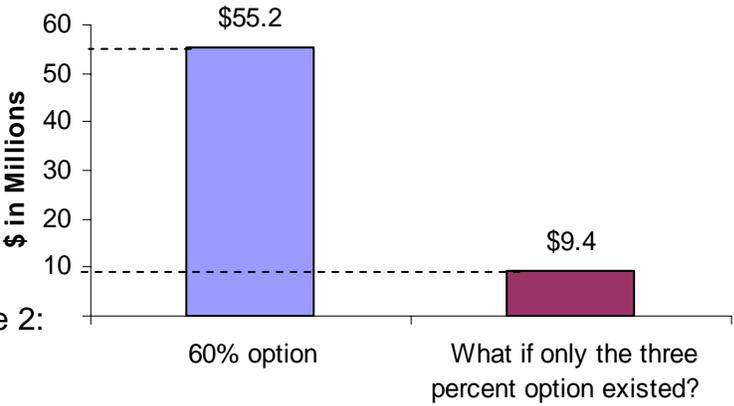


Figure 2:

3. Data Analysis: Top 10 Percent of Modernization Projects

Of the 319 modernization projects apportioned from August 2007 to December 2008 with an accessibility and fire code requirements grant allowance, the top 10 percent, or 32 projects, was reviewed to determine whether there was a trend for projects with a higher base grant to select one option over another. Figure 3 shows that large projects (based on the amount of base grant received) tend to select the 60 percent option rather than the three percent option.

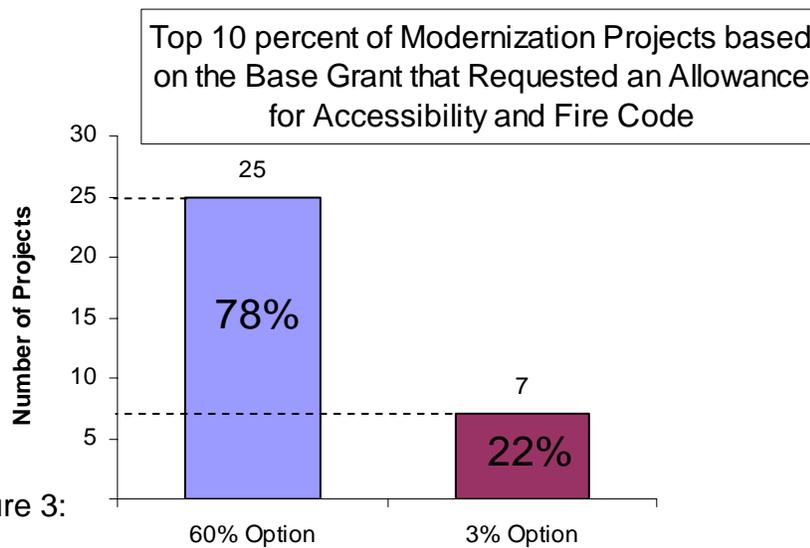


Figure 3: