

**STATE ALLOCATION BOARD**

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**Date:** December 23, 2002

**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 Tuesday, January 7, 2003 (9:30 am-3:30 pm) at the US Bank Plaza, 980 9<sup>th</sup> Street, Conference Room A, B & C, Sacramento CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. 2003 Implementation Committee Meeting Dates (cont'd)
3. SFP Enrollment Projection: Impacts as a Result of AB 14 (Goldberg), AB 1994 (Reyes) and Proposition 39 (cont'd)
4. Assembly Bill 14 (Goldberg) School Facilities (cont'd):
  - A. Charter Schools Proposed SFP Regulations
  - B. Charter Schools CSFA Financial Soundness Proposed Regulations
  - C. Increased Toxic Site Costs and Toxic Evaluation and Response for Additions to Existing Sites
5. AB 1506 (Wesson) Public Works: Labor Compliance (cont'd)
6. Use of New Construction Grants (cont'd)

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 Portia Jacobson at (916) 323-4355.

BRUCE B. HANCOCK  
Chairperson

BBH:mc

State Allocation Board Implementation Committee  
January 7, 2003  
AB 14: Charter School Facilities Program

At the December 4, 2002, State Allocation Board (SAB) Implementation Committee meeting, proposed regulations for the Charter School Facilities Program were presented. Listed below are the significant issues that were discussed at the meeting and the outcome of those issues.

1. There was further discussion regarding the amount of eligibility a charter can access from the district's new construction eligibility and if a "cap" should be placed in regulation. Various members of the audience and committee presented a couple of different proposals. The OPSC conferred with legal counsel and there is currently no authority in the law to limit the amount of eligibility a charter school can access from the district's remaining new construction eligibility. However, the California School Finance Authority (CSFA) will be reviewing the charter's enrollment (historical, current, and projected) as part of the financial soundness test. In addition the Charter School will be required to certify on the application that the number of pupils requested will ultimately be housed in the facility once constructed. Although a consensus was not reached on this issue, the OPSC believes that both the enrollment review and certification will serve as a check and balance in the amount of district new construction eligibility a charter school can access.
2. There was further discussion to review the maximum number of the preference points available for each category (40/40/20). A main issue of that discussion was the definition of non-profit in the proposed regulations. Concern was raised because it currently does not allow preference to be given to a Charter School organized as a nonprofit benefit corporation. In addition, a proposal was presented to provide an equal number of preference points for Low Income, Overcrowded School Districts, and Non-Profit. The OPSC agreed to review both the split of the preference points and also the language of non-profit. No action was taken in changing the preference points from 40/40/20. However, the definition of a non-profit entity was revised to include a non-profit public benefit corporation.
3. There was discussion regarding the use of facility once returned to the school district. If the district chooses to sell the facility, the question was asked would the pupils used to construct the project be added back into the baseline once sold? Although a consensus was not reached on this issue, the OPSC believes that once the eligibility has been reduced from the district's new construction baseline the pupils have been housed and will not be added back into the baseline if the facility is sold.
4. If a Charter School holds classroom instruction for 60 percent of the time and the remaining 40 percent is independent study, could an application for facility funding be filed by the Charter School? The *Enrollment Certification/Projection*, Form SAB 50-01 is used by school districts to report enrollment data for the purposes of generating new construction eligibility for a school district. Due to other AB 14 requirements, AB 1994, and Proposition 39, the Form is being amended to allow school district's to report only Charter School students

receiving classroom-based instruction as provided in EC Section 47612.5(e)(1). This Education Code Section requires that the instruction time at the school site be at least 80 percent of the minimum instructional time. In addition to the changes on the Form SAB 50-01, a statement has been added to the new *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 to advise charters that in order to file an application their enrollment must be eligible to be reported by the school district where the Charter School is physically located on the Form SAB 50-01.

5. There was discussion regarding the “Restricted Maintenance Account” that is required to be established by an applicant receiving School Facility Program funding. Should the ability of the charter to establish and maintain the fund be part of CSFA’s review in determining financial soundness. The OPSC has conferred with the CSFA and the ability to establish the fund will not be part of CSFA’s financial review because it is a review of past account/funds of the Charter School rather future. However, on the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09, the Charter School will certify to the establishment of the fund and the provisions in the Education Code.
6. At the November meeting, there was a discussion regarding whether charter schools can apply for Financial Hardship. The OPSC conferred with legal counsel regarding the viability for financial hardship status for charter school applications. It was found that there is currently no authority in law to allow charter schools to apply for financial hardship. The lease payments are in lieu of financial hardship therefore, no change to the proposal was necessary relating to this issue.
7. At the November meeting, a proposal was given to change the definition of small, medium, and large charter schools, as follows: Small Charter School shall be a school with pupils 100 or under, Medium Charter School shall be a school with pupils between 101-350 and a Large Charter School shall be a school with pupils over 351. The California Department of Education (CDE) provided data to support the above and it was found to be generally consistent with the proposal. It was agreed that this adjustment would be made and the proposed regulations include this change. (See Section 1859.2)

#### *Additional Issues*

1. Regulation Section 1859.162.1 has been added to the proposed regulations to establish a method for Charter Schools that serve a combination of grade levels (K-12, 7-12, etc) and therefore, reside in the boundaries of both an elementary and high school district to apply for funding.
2. As a result of the passage of AB 1506 – Labor Compliance, a certification to comply with the law was added to the Form 50-09.
3. AB 14 also changed the methodology for calculating site acquisition costs if toxic clean-up is required. For the purpose of determining funding at the time of preliminary apportionment the additional allowance will be automatic and

adjusted at the time of final apportionment based on substantiating documents (See Section 1859.145.1).

4. Another aspect of the law that has yet to be discussed at an Implementation Committee meeting is the request to consult with other regulatory agencies to streamline the school construction process (i.e., CDE site and plan approval, DSA plan approval and DTSC). The OPSC has conferred with CDE and the department is in the process of identifying those areas that could be streamlined with regards to plan approval. The OPSC has contacted the other regulatory agencies with the goal to work with these departments to assist charter schools in the construction process.

State Allocation Board Implementation Committee  
January 7, 2003

Assembly Bill 14, Assembly Bill 1994, and Proposition 39: Enrollment Reporting

**Background**

Under current regulations, a school district may include pupils attending a charter school located outside of the geographical jurisdiction of the school district, as long as the student occupies space in a classroom. The district would report this information in its enrollment projection on the *Enrollment Certification/Projection*, Form SAB 50-01 to generate new construction eligibility. Proposition 39 hold districts accountable for providing facilities to in-district pupils attending charter schools located within their district boundaries regardless if they chartered the school. AB 1994 limits the ability of a school district to charter a school within their district boundaries. AB 14 clarifies how pupils attending charter schools shall be counted for the purpose of generating new construction eligibility under the School Facility Program.

**Issue**

In accordance with Education Code Section 47605, a school district will no longer have the ability to charter a school located outside its district boundaries. Education Code Section 17070.73 further states that a school district may only include in its enrollment the pupil attendance of a charter school that is physically located within the district's geographical jurisdiction (boundaries). If the charter school is physically located outside of the district boundaries, the district may not claim these pupils. These new requirements will require the modification of current enrollment reporting instructions, as well as adjustments to the new construction baseline eligibility under certain conditions.

**Enrollment Instructions**

The current Form SAB 50-01 instructions direct school districts to report all classroom-based students attending charter schools regardless of location. These instructions allow school districts to report the enrollment of charter schools located outside of the district boundaries. In order to comply with Proposition 39, AB 1994 and AB 14, the OPSC recommends the following changes to the SAB 50-01 instructions:

**The enrollment data must include...**

**"...students receiving Classroom-Based Instruction<sup>1</sup> in charter schools located within the district boundaries and are enrolled in the same grade levels served by the district regardless if the district chartered the school..."**

**Do not include...**

**"...students receiving Classroom-Based Instruction in charter schools located within the district boundaries but are enrolled in grade levels not served by the district, students living inside district boundaries but are receiving Classroom-Based Instruction in charter schools located outside the district boundaries, students receiving Nonclassroom-Based Instruction<sup>2</sup>..."**

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<sup>1</sup> "Classroom-Based Instruction" shall have the meaning set forth in Education Section 47612.5(e)(1)

<sup>2</sup> "Nonclassroom Based Instruction" shall have the meaning set forth in Education Section 47612.5(d)(1) and (e)(2)

## **New Construction Baseline Adjustments**

The OPSC anticipates that adjustments to the new construction baseline may be required under the following circumstance:

If a district's baseline eligibility contained enrollment from a charter school that was physically located outside of the district boundaries, a revised Form SAB 50-01 removing those pupils would be required to adjust the baseline eligibility. The district in which the charter school is physically located can now claim that enrollment and may submit a revised SAB 50-01 including that enrollment, which would require an adjustment to the district's eligibility.

There are two issues related to this statutory change, which include:

1. In the case of the above scenario how will the affected districts be identified?
2. Will OPSC automatically adjust the later district's baseline in the above scenario?

## **Discussion**

### **Issue #1**

This change will affect some of the new construction projects currently listed on the OPSC Workload list. Therefore, the OPSC will advise all school districts that beginning January 1, 2003 a revised SAB 50-01 may be needed to make adjustments to their new construction baseline eligibility for changes in enrollment due to charter schools. In cases where districts are now reporting charter school pupils located within district boundaries but previously reported by a different chartering district, the following shall apply

- The district will be required to submit a letter listing all charter schools located within district boundaries but were chartered by another school district, and
- Provide the name of the chartering school district and the number of eligible pupils for each charter school.

In cases where districts chartered schools outside of the district boundaries and previously reported this enrollment on the Form SAB 50-01; the following shall apply

- The district will be required to submit a letter listing the charter schools that were previously reported as part of the districts enrollment in the Form SAB 50-01 and are located outside the district boundaries; and,
- Provide the name of the school district where each charter school is physically located.

### **Issue #2**

The Education Code does not provide the authority for OPSC to automatically adjust the district's baseline in the previous scenario; nor does it state that the district is required to revise their enrollment numbers. However, a charter school or a school district on behalf of a charter school filing an application for preliminary apportionment under the new Charter School Facilities Program (CSFP), must submit a revised 50-01 *Enrollment Projection Certification* Form including the charter school ADA as part of the application process. Therefore, the new construction eligibility baseline may need to be adjusted to properly account for the charter school enrollment based on these new regulations.

## **Recommendation**

Present the attached proposed regulation amendments to the SAB.

**AB 14 Charter School Facilities Program: Regulation Amendments**

Amend Section 1859.2 as follows:

Section 1859.2 Definitions

"Approved Application For Charter School Funding" means a district filing on behalf of a charter school or the charter school submitting directly on *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), including all required supporting documents as identified in the General Information Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Authority" shall have the meaning set forth in Education Code Section 17078.52(c)(1).

"Charter School" shall mean a school established pursuant to Education Code Section 47600, et seq.

"Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(c)(4).

"Final Charter School Apportionment" shall mean a Preliminary Charter School Apportionment that complies with Section 1865.166.

"Form SAB 50-09" means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01-03), which is incorporated by reference.

"Large Charter School" shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report.

"Low-income" shall be those charter schools in which a percentage of the pupils receive free or reduced meals according to the California Department of Education.

"Medium Charter School" shall be defined as a school with between 101 pupils to 350 pupils, based on the latest available CBEDS report.

"Non-Profit Entity" means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code Section 5110, et seq.

"Overcrowded School District" is any district that demonstrates eligibility over two percent of their unhoused pupils.

"Preliminary Charter School Application" means the charter has submitted Form SAB 50-09, including all documents that are required to be submitted with the application as identified in the General Information Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Charter School Apportionment" means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

"Region One" shall consist of the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Mendocino, Glenn, Tehama, Butte, Plumas, Sierra, Nevada, Placer, Yuba, Yolo, Sutter, Colusa, and Lake.

"Region Two" shall consist of the following counties: Sonoma, Napa, Yolo, Sacramento, El Dorado, Marin, Solano, Contra Costa, San Joaquin Amador, Alameda, Alpine, Calaveras, Mono, Tuolumne, Mariposa, Madera, Merced, Stanislaus, Santa Clara, Santa Cruz, San Mateo, San Francisco, San Benito, Fresno, Monterey, Kings, Tulare, and Inyo

"Region Three" shall consist of the following counties: San Luis Obispo, Kern, Santa Barbara, Ventura, San Bernardino, Los Angeles, Orange, Riverside, San Diego and Imperial.

"Rural Area" shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

"Small Charter School" shall be defined as a school with less than 100 pupils, based on the latest available California Basic Education Data System (CBEDS) report.

"Suburban Area" shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

"Urban Area" shall be as a school with a locale code of one as classified by the NCES.

Article 14. Charter School Facilities Program

Section 1859.160. General (Preliminary Charter School Apportionment).

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.50 through 17078.64 for new construction shall complete and file a Form SAB 50-09.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.161. CSFP Preliminary Application Submittals.

A Charter School seeking a Preliminary Charter School Apportionment from the funding made available from Education Code Section 100620(a)(1)(A), shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003.

A Charter School seeking a Preliminary Charter School Apportionment out of the Education Code Section 100820(a)(1)(A) shall complete and submit Form SAB 50-09 between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing the funding.

The Board may establish additional application filing periods as needed.

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

Reference: Section 17078.53, Education Code.

Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all the following criteria are met:

- (a) The district in which the Charter School is physically located must have SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50.
- (b) The pupil grants requested on the Form SAB 50-09 are at the grade level of project being proposed in the Charter School application.

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

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

Section 1859.162.1. Overlapping District Boundaries.

If the Charter School provides instruction for a combination of grade levels and therefore resides in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Preliminary Charter School Application requesting pupil grant eligibility from each district, as appropriate will be required.

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

Reference: Sections 17078.53 and 17078.54, Education Code.

Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to the Board providing Preliminary Charter School Apportionments to a project, a certification from the Authority that the Charter School is Financially Sound will be required. The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.164. Application Funding Criteria.

If the amount of the Preliminary Charter School Applications received pursuant to Section 1859.161 exceed the funds available, the Financially Sound applications shall be identified in each of the following four categories:

- (a) Geographical Region One, Two, or Three.
- (b) Urban, Rural, and Suburban areas.
- (c) Large, Medium, and Small Charter Schools.
- (d) K-6, 7-8, and 9-12 grade levels.

The preference points calculated in Section 1859.164.1, will be used to determine the projects that will be funded from the categories set in (a) through (d) above. The Board shall first apportion one project of each possible type, a maximum of three, within each category starting with (a) and continuing through (d). If more than one application is received of the same type within a category, the Board will apportion based on which project has the highest preference points. If a project in subsequent categories has the highest preference points of a possible type but was previously apportioned under a prior category, the next project of the same type with the next highest preference points will be apportioned. The same process will continue for the remaining categories until the Board has apportioned a project within each type in categories (a) through (d), based on the submittal of CSFP Preliminary Applications received.

If funds remain after funding one type of each category in (a) through (d), the Board will again start apportioning projects in category (a) and apportion one project of each type with the highest preference points previously not apportioned. If sufficient funds do not remain to apportion additional projects of each type, then the project(s) with the highest preference points will receive funding within each category.

All Preliminary Charter School Applications received from an Charter School will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same Charter School, those applications will be processed by the OPSC based on the priority order assigned to those applications by the Charter School on Form SAB 50-09.

If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. Any applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the Charter School.

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

Reference: Section 17078.56, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all complete applications. A project shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a financially sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

<u>Percentage Receiving Free/Reduced Lunch</u>	<u>Preference Points Assigned</u>
<u>5-15%</u>	<u>4</u>
<u>16-30%</u>	<u>8</u>
<u>31-39%</u>	<u>12</u>
<u>40-48%</u>	<u>16</u>
<u>47-55%</u>	<u>20</u>
<u>56-64%</u>	<u>24</u>
<u>65-73%</u>	<u>28</u>
<u>74-82%</u>	<u>32</u>
<u>83-91%</u>	<u>36</u>
<u>92-100%</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) into the district's current enrollment (round up). Use the following sliding scale to determine the number of preference points:

<u>Percentage Overcrowded</u>	<u>Preference Points Assigned</u>
<u>2-5%</u>	<u>4</u>
<u>6-9%</u>	<u>8</u>
<u>10-13%</u>	<u>12</u>
<u>14-17%</u>	<u>16</u>
<u>18-21%</u>	<u>20</u>
<u>22-27%</u>	<u>24</u>
<u>28-34 %</u>	<u>28</u>
<u>35-41%</u>	<u>32</u>
<u>42-50%</u>	<u>36</u>
<u>51% and above</u>	<u>40</u>

- (c) Non-Profit Entity: If the Charter School is identified as meeting the definition of a Non-Profit Entity, the project will receive 20 preference points

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

Reference: Section 17078.56, Education Code.

1859.165. Conversion of Preliminary Charter School Apportionment.

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

- (a) The Final Charter School Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (b) A Charter School seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50-04, which cannot exceed more than 100 percent of the pupils the Charter School originally requested and received at the Preliminary Charter School Apportionment.
- (c) The request for the number of pupils reported on Form SAB 50-04 shall be enrolled and housed in the classrooms constructed in the project.

If the Charter School is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

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

Reference: Section 17078.52, Education Code.

Section 1859.166. Time Limit on Preliminary Charter School Apportionment.

- (a) A Preliminary Charter School Apportionment shall be converted or requested to be converted to a Final Charter School Apportionment pursuant to Section 1859.165 after three years from the date the Preliminary Charter School Apportionment was made unless the Charter School received approval of an extension pursuant to Section 1859.166.1.
- (b) If (a) above is not met, the Preliminary Charter School Apportionment shall be rescinded and the SFP New Construction Eligibility will be increased for the pupils assigned to the Preliminary Charter School Application for the school district that physically contains the Charter School within its geographical boundaries.
- (c) Any Preliminary Charter School Apportionment rescinded as a result of this Section shall be transferred to the Charter School Facilities Unrestricted Fund.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.166.1. Preliminary Charter School Apportionment Time Limit Extension.

A Charter School that has received a Preliminary Charter School Apportionment may request a one-year extension of the time limit on the apportionment prescribed in Section 1859.166(a). The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The Charter School has provided evidence of both of the following:
  - (1) The CDE has made a contingent or final approval of the proposed site; and,
  - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board.

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

Reference: Section 17078.52, Education Code.

Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
  - (1) If the balance in the Unrestricted Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment. The Final Charter School Apportionment shall become the full and final apportionment for the project.
  - (2) If the balance in the Unrestricted Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment. Any remaining balance in the Unrestricted Charter School Facilities Account shall be converted to a Final Charter School Apportionment and shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Charter School Facilities Account pursuant to this Subsection (a) shall be used by the Board for other Charter School Facility projects.

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

Reference: Section 17078.52, Education Code.

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the Charter School will be subject to the matching share requirement in Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

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

Reference: Section 17078.54, Education Code.

Section 1589.169. Eligible Expenditures.

Charter School Program grants that are converted to a Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Additionally, expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

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

Reference: Sections 17078.52, Education Code.

Section 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50-09 on its own behalf pursuant to this Article, shall comply with the requirements of Sections 1859.100, 1859.101, and 1859.102.

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

Reference: Sections 17072.34 and 17078.54, Education Code.

Section 1859.171. Use of Facility.

The facility may continue to be used by a Charter School as prescribed in Education Code Section 17078.62(a). Once a charter is no longer occupying the facility, the school district where the charter is physically located can either:

- (a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
  - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
  - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- (b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites and any remaining balance shall be used to pay the local matching share, if any.

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

Reference: Section 17078.62, Education Code.

**Other Regulation Amendments as a Result of AB 14**

Section 1859.32. Adjustments to Gross Classroom Inventory.

After the gross classroom inventory has been prepared pursuant to Section 1859.31, it will be reduced by the following. Any classrooms:

- (a) abandoned and approved for replacement as a hardship under the provisions of the LPP;
- (b) at a school operated on a year-round schedule that has been used continuously for at least 50 percent of the time for preschool programs in the five years preceding the receipt of the application for determination of eligibility;
- (c) included in any new construction LPP project that has not received a Phase C apportionment;
- (d) that is portable and owned or leased by the district for 20 years or more that was approved for abandonment in a LPP project and the plans for the project had DSA approval prior to November 4, 1998;
- (e) that is a trailer and is transported/towed on its own wheels and axles;
- (f) used exclusively for regional occupational centers, regional occupational programs, child care, preschool and/or Adult Education Programs, and was built or acquired with funds specifically available for those purposes;
- (g) of less than 700 interior square feet;
- (h) originally built for instructional use, but converted to one of the following:
  - (1) used continuously for school administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
  - (2) used continuously for central or main district administration for at least five years prior to the submittal of the application to the OPSC for determination of eligibility.
  - (3) used for school library purposes during the previous school year.
- (i) owned but leased to another district.
- (j) any portable classroom excluded by Education Code Section 17071.30.
- (k) that is permanent space and leased for less than five years.
- (l) any permanent classroom contained in a project for which the construction contract was signed between August 27, 1998 and November 18, 1998 and for which the district did not have full project eligibility under the LPP.
- (m) that was acquired with joint-use funds specifically available for that purpose.
- (n) that were provided to a Charter School in lieu of providing school district eligibility.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17071.25, 17070.73, 17071.30 and 17077.40, Education Code.

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 1859.160.
- (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.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.

- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82 (a).
- (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:
  - (1) That is a trailer and transportable/towed on its own wheels and axles.
  - (2) Of less than 700 interior square feet.
  - (3) Excluded pursuant to Education Code Section 17071.30.
  - (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
  - (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
  - (6) 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.
  - (7) That was acquired with joint-use funds specifically available for that purpose.
- (j) For ~~s~~Small ~~s~~School ~~d~~Districts, decreased:
  - (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
  - (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
- (k) Adjusted for any change in classroom inventory as a result of a reorganization election.
- (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.167.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20 and 17077.40, Education Code.

### Section 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

The State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by

the OPSC audit. The State's portion of any savings from a new construction project or a Joint-Use Project may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63 and 17077.40, Education Code.

#### Section 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.131-120 for Joint-Use Projects, Section 1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects. The audit will also assure that the district complied with all site acquisition guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1.

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of the site and the hazardous waste removal costs that were used to determine the New Construction Additional Grant and the actual amount paid by the district for the site, the relocation cost, the DTSC fee, and the costs for hazardous waste materials removal.
- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).
- (c) The difference in the hazardous waste removal costs that was used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for the allowable cost for hazardous waste removal.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.131-120 for Joint-Use Projects, Section

1859.160 for Charter School projects, and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251 (b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50 (b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10 (c).

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

#### Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
  - (1) \$5,226.82 for each elementary school pupil.
  - (2) \$5,533.65 for each middle school pupil.
  - (3) \$7,225.94 for each high school pupil.
  - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
  - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size when the following criteria are met equal to the following:
  - (1) The district has requested an increase for multilevel construction pursuant to (b) above. If the sum of the proposed useable acreage requested on Form SAB 50-08 and any existing useable acreage at the

- proposed school site (if applicable) is at least 50 percent but less than 75 percent of the site acreage determined in (4) below, an amount equal to eight percent of the amount determined in (a).
- (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined by ~~If the sum of the proposed useable acreage requested on Form SAB 50-08 and any existing useable acreage at the proposed school site (if applicable) is at least 30 percent but less than 50 percent of the site acreage determined in (4) below, an amount equal to 15 percent of the amount determined in (a).~~
  - ~~(3) If the sum of the proposed useable acreage requested on Form SAB 50-08, and any existing useable acreage at the proposed school site (if applicable) is less than 30 percent of the site acreage determined in (4) below, an amount equal to 50 percent of the amount determined in (a).~~
  - ~~(4) Multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For the purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.~~
  - (3) The value of the property as determined in Section 1859.145.1(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing site.
  - (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
  - (h) For purposes of COS projects, An amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For purposes of charter schools, an amount equal to nine percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2002.
  - (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.

The amounts shown in (a) shall be adjusted annually in a manner prescribed in Section 1859.71.

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

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

#### Section 1859.145.1. Preliminary Apportionment Site Acquisition Value.

If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
  - (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Application or Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property. The acreage identified in the appraisal or the preliminary appraisal may not

exceed the proposed usable acreage requested on Form SAB 50-08 or Form SAB 50-09, as appropriate.

- (2) The Median Cost of an acre of land in the General Location of the proposed project using historical information in the General Location multiplied by the number of proposed useable acres requested on Form SAB 50-08 or Form SAB 50-09, as appropriate. Historical information that may be considered to determine land cost may include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a period of up to two years prior to the date the Preliminary Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
  - (1) 21 percent of the value determined in (a).
  - (2) The sum of the following:
    - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
    - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
  - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the General Location.
- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, one-half times the value of the property determined in either (a)(1) or (a)(2) above.

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

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

**State Allocation Board Implementation Committee  
January 7, 2003**

**Assistance for Site Acquisition and Response Action**

**ISSUES**

Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, allows for increased site funding for toxics when specified conditions have been met. It also provides additional funding for evaluation and response action in connection with hazardous substances at an existing school site. There are two issues related to these statutory changes which include:

1. For purposes of Education Code Section 17072.13(a) and (b), what criteria will be utilized to provide toxic funding in excess of 50 or 100 percent of one and one-half times the appraised value?
2. What will the mechanism be for the advance release of funding for toxic evaluation and response action on existing school sites?

**BACKGROUND**

Prior to AB 14, existing law authorized State funding for up to 50 percent of the school district's cost of the site plus the response action costs associated with hazardous substances but not to exceed the appraised value of the site.

Pursuant to AB 14, Education Code Section 17072.13 modifies the funding formula to increase the State's share for purposes of toxics clean-up of a site. However, in order to receive that increased funding, there are specific conditions that need to be met. The following issues are discussed below:

**DISCUSSION**

**Issue Number 1:**

Education Code Section 17072.13 stipulates that site and toxics funding shall not exceed 50 or 100 percent of one and one-half times the appraised value of the uncontaminated site. In a 50/50 example, this means that the "new" total spending cap on a site that is appraised at \$10 million, with toxic remediation issues, would be \$15 million (\$10 million x 50 percent = \$5 million, so \$10 million + \$5 million = \$15 million). In this example, the State's share for a 50/50 project would be \$7.5 million, that would provide half the site value at \$5 million and half the toxic cost at \$2.5 million. This change allows districts to receive additional dollars in order to clean-up toxic site problems beyond the original appraised value "cap." This change will be addressed by modifying current site toxic regulations. The same methodology would be calculated for financial hardship projects, but the State's share is 100 percent, less any available district contribution for the project.

Education Code Section 17072.13 further states that the Board may exceed this 50 or 100 percent of one and one-half times the appraised value maximum for projects that demonstrate circumstances of extreme need. In order to ensure program integrity and encourage cost-effective site decisions, the OPSC is proposing criteria that districts will be required to meet prior to receiving the additional toxic funding. They are as follows:

- California Department of Education (CDE) determination that the site is the best available site for meeting the educational and safety needs of the school district.
- Substantiation that the district exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and response action approved by the DTSC.

Issue No. 2:

Current regulation would provide funding for response action for hazardous remediation on an existing school site. AB 14 provides that the evaluation and response action costs shall be available to school districts in advance of the submittal of the construction funding application. As a result of this statutory change, no mechanism exists for the funding of these costs on existing school sites in advance of the submittal of the construction funding application. Staff proposes to modify current environmental hardship regulations to allow for funding on existing school sites in advance of the submittal of the construction funding application for evaluation and response action for hazardous remediation.

**RECOMMENDATIONS**

1. Modify existing Regulation Sections 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, and 1859.81.1 to reflect new toxics spending caps and criteria for extreme need.
2. Modify Form SAB 50-04 to incorporate the new toxics spending caps.

Amend Regulation Section 1859.74.2 as follows:

Section 1859.74.2. New Construction Additional Grant for Hazardous Waste Removal.

With the exception of projects that received site acquisition funds under the LPP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the allowable costs of hazardous materials/waste removal and/or remediation costs. The allowable site costs shall not exceed the lesser of one and one half of (a) or (b) below times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to one and one half times the appraisal value cap:

- (a) The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
  - (1) ~~The costs may include~~ the costs for preparation of the RA.
  - (2) ~~The costs may include~~ the DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.
- (b) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
- (c) Not less than \$50,000 or four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.
- ~~(3) The costs may not include continuous operational and maintenance costs associated with the RA.~~
- ~~(c) The difference in the amounts determined pursuant to Section 1859.74 (a) and (b).~~

~~In no event can the amount provided in this Section and Section 1859.74 exceed 50 percent of the appraised value of the site as determined in Section 1859.74(b).~~

- ~~(d) In lieu of the funding provided in (a) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:~~
  - ~~(1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.~~
  - ~~(2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.~~

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17072.12 and 17251, Education Code.

Amend Regulation Section 1859.74.3 as follows:

Section 1859.74.3. New Construction Additional Grant for Incidental Site and Hazardous Waste Removal for Leased Sites.

When a district has requested funding on a vacant leased site pursuant to Section 1859.22 that was never used for school purposes and a site evaluation requires a RA, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the lesser of one and one half times the appraised

valuation that conforms to Section 1859.74.1 of the amounts allowed in (a) or (b) below: The allowable site costs shall not exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs in subsections (a), (a)(1) and (a)(2) plus the additional costs included in (b) and (c). The costs in (b) and (c) are in addition to one and one half times the appraisal value cap:

- ~~(a) The sum of all the following: The costs associated with the site acquisition and to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:~~
- ~~(1) The costs for preparation of the RA.~~
  - ~~(2) The DTSC costs for review and oversight of the preparation and implementation of the RA. The costs may not include continuous operational and maintenance costs associated with the RA.~~
- ~~(b) The approved relocation expenses that conform to Title 25, Division 1, Chapter 6, Subchapter 1, California Code of Regulations, (Section 6000, et seq.). The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.~~
- ~~(c) Not less than \$50,000 or four percent of the appraised value. This amount shall provide an allowance for any appraisal, escrow, survey, site testing, CDE review/approvals and the preparation of the POESA and the PEA.~~
- ~~(3) The DTSC costs for review, approval, and oversight of the POESA and the PEA.~~
- ~~(4) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:~~
- ~~(A) The costs may include the costs for preparation of the RA.~~
  - ~~(B) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.~~
  - ~~(C) The costs may not include continuous operational and maintenance costs associated with the RA.~~
- ~~(b) Appraised Value of the Site determined by an appraisal made or updated no more than six months prior to application submittal to the OPSC for funding pursuant to Section 1859.74.1. The appraisal may be reviewed by the OPSC for conformance with Section 1859.74.1.~~
- (d) In lieu of the funding provided in (a) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:
- (1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
  - (2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.
- (e) If the toxics evaluation of the leased site does not require a RA, then the allowable site costs shall not exceed the lesser of one half the appraised or actual purchase price plus the additional amounts provided in Section 1859.74.

The appraised value of the site shall be reduced, on a prorated basis, by the percentage of the excess acreage of the site that exceeds the master plan site acreage approved by the CDE.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17072.12, 17251 and 17070.71, Education Code.

**Amend Regulation Section 1859.74.4 as follows:**

**Section 1859.74.4. New Construction Additional Grant for Hazardous Waste Removal Required on an Existing School Site.**

- (a) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide funding, in addition to any other funding authorized by these Regulations for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the New Construction Grants will be used if all the following are met:
  - (1) The New Construction Grant request is for additional school facilities on an existing school site.
  - (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
  - (3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
  - (4) The hazardous material cleanup costs are required by the DTSC.
- (b) If all the criteria in subsection (a) are met, the allowable hazardous waste removal cleanup costs shall be one half of all the following:
  - (1) The costs for preparation of the POESA, the PEA and the RA.
  - (2) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
    - (A) The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
    - (B) The costs may not include continuous operational and maintenance costs associated with the RA.
- (c) In advance of the New Construction Adjusted Grant, districts performing a RA on additions to existing school sites shall be eligible for the costs associated with evaluation and RA required by the DTSC.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.18, Education Code.

**Amend Regulation Section 1859.75 as follows:**

**Section 1859.75. Alternative District-Owned Site.**

In order to receive funding authorized by Sections 1859.74 or 1859.74.2, the district must:

- (a) certify there is no available Alternative District-Owned Site for that project deemed useable for school purposes by the CDE; or,
- (b) certify that it intends to sell an available Alternative District-Owned Site and use the proceeds for the purchase of the new site. In this event, the Board will recognize either (1) or (2) the lesser of:
  - (1) one-half of the actual cost or the appraised value of the available Alternative District-Owned Site as determined in Section 1859.74, whichever is the lesser, or
  - (2) fifty percent of one and one-half times the actual cost or the appraised value of the site purchased for the project as determined in Section 1859.74.2, whichever is the lesser.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Section 17072.12, Education Code.

Amend Regulation Section 1859.75.1 as follows:

Section 1859.75.1. Separate Site Apportionment for Environmental Hardship.

- (a) A district is eligible for a separate apportionment for site acquisition even if it does not meet the financial hardship criteria contained in Section 1859.81, when all the following requirements are met:
- (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
  - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
  - (3) The district has obtained a preliminary appraisal or an appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. The preliminary appraisal report may be made without access to the site.
  - (4) The district has provided a letter from the DTSC pursuant to Education Code Section 17072.13 that indicates the time necessary to complete the remediation removal of any hazardous materials/waste on the proposed site as determined necessary by the PEA and required in the RAP, will take at least 180 calendar days to complete.
- (b) If the conditions in (a) are met, the district is eligible for a separate site apportionment not to exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (b)(1) and (b)(4) plus the additional costs included in (b)(2) and (b)(3). The costs included in (b)(2) and (b)(3) are in addition to the one and one half times the appraisal value cap for one half of the following:
- (1) ~~The lesser of the appraised value~~ cost of the site as determined in Section 1859.74.1 ~~and or~~ the amount the district reasonably expects to pay for ~~the site including~~ any hazardous materials/waste removal and/or remediation costs for the site.
  - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
  - (3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.
  - (4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.

The amount provided in (b) as a separate site apportionment shall be offset from the New Construction Grant amount the district would otherwise be eligible for pursuant to Section 1859.70. A district seeking a separate apportionment for site acquisition shall submit Form SAB 50-04.

(c) In lieu of the funding provided in (b) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:

- (1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
- (2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17076.10, Education Code.

Amend Regulation Section 1859.81.1 as follows:

Section 1859.81.1. Separate Apportionment for Site Acquisition and Design Costs.

A district that meets the financial hardship criteria in Section 1859.81 is eligible for the following:

- (a) For a new construction project, a separate apportionment for site acquisition when all the following requirements are met:
  - (1) The district has eligibility for grants that equal at least 50 percent of the CDE master plan capacity of the site.
  - (2) The district has received a contingent site approval letter from the CDE indicating that the proposed site is the best available.
  - (3) The district has obtained a preliminary appraisal of the property by a qualified appraiser utilizing criteria outlined in Section 1859.74.1. This report may be made without access to the site.
- (b) If the conditions in (a) are met on a site that does not require a RA, the Board will apportion all of the following less any district funds available for the project pursuant to Section 1859.81(a):
  - (1) An amount not to exceed 100 percent of the lesser of the preliminary appraised value of the site as determined by Section 1859.74.1 or the amount the district reasonably expects to pay for the site including any hazardous material clean-up.
  - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
  - (3) Four percent of the lesser of the preliminary appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous material clean-up but not less than \$50,000.
  - (4) The estimated DTSC costs for review, approval, and oversight of the POESA and the PEA.
- (c) If the conditions in (a) are met on a site that will require a RA, the district is eligible for a separate site apportionment not to exceed one and one half times the value of an appraisal that conforms to Section 1859.74.1 for the costs included in (c)(1) and (c)(4) plus the additional costs included in (c)(2) and (c)(3). The costs included in (c)(2) and (c)(3) are in addition to the one and one half times the appraisal value cap.
  - (1) The cost of the site as determined in Section 1859.74.1 and the amount the district reasonably expects to pay for any hazardous materials/waste removal and/or remediation costs for the site.
  - (2) The estimated relocation expenses that will conform to Title 25, California Code of Regulations, Section 6000, et seq. The reasonable and necessary relocation costs for purchasing fixtures and equipment, personal property, new machinery/equipment, and the installation of any improvements at the replacement residence or business location may be included as relocation assistance.
  - (3) Four percent of the lesser of the appraised value of the site or the amount the district reasonably expects to pay for the site acquisition including any hazardous materials/waste removal and/or remediation costs for the site, but not less than \$50,000.
  - (4) The estimated DTSC costs for review, approval and oversight of the POESA and the PEA.
- (d) In lieu of the funding provided in (c) above, site evaluations that require a RA shall meet the criteria in (1) and (2) below in order to be eligible for site funding in excess of one and one half times the appraised value that conforms to Section 1859.74.1 in cases where unforeseen circumstances exist:
  - (1) CDE determination that the site is the best available site for meeting the educational and safety needs of the School District.
  - (2) Substantiation that the School District exercised due diligence in minimizing the overall site and clean-up costs and that the costs were limited to the minimum required to complete the evaluation and RA approved by the DTSC.

- (e) For new construction projects, the Board will apportion an amount not to exceed 40 percent of the new construction grant less any district funds available for the project pursuant to Section 1859.81(a). For modernization projects, the Board will apportion an amount not to exceed the following:
- (1) If the Approved Application is received on or before March 15, 2002, 20 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).
  - (2) If the Approved Application is received after March 15, 2002, 25 percent of the modernization grant less any district funds available for the project pursuant to Section 1859.81(a).

The amount apportioned is an estimate of the funds needed for design, engineering, and other pre-construction project costs.

Qualifying districts may request a separate apportionment for the design and for site acquisition for the same new construction project.

The amount provided as a separate apportionment shall be offset from the New Construction Adjusted Grant or the Modernization Adjusted Grant amount the district would otherwise be eligible for pursuant to Sections 1859.70 and 1859.81 when the district submits Form SAB 50-04. A district seeking a separate apportionment for site acquisition or design costs shall submit Form SAB 50-04. If a new construction project received a previous design apportionment, the district may request an additional design apportionment for that project up to the 40 percent maximum design apportionment allowed pursuant to this Section.

The Form SAB 50-04 that is subsequently submitted for the New Construction Adjusted Grant must be for at least 50 percent of the New Construction Grant the district requested as a separate design apportionment.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 80 percent of the Modernization Grant the district requested as a separate design apportionment that was received on or before March 15, 2002.

The Form SAB 50-04 that is subsequently submitted for the Modernization Adjusted Grant must be for at least 60 percent of the Modernization Grant the district requested as a separate design apportionment that was received after March 15, 2002.

When the Board is accepting applications pursuant to Section 1859.95, the funding of the new construction or modernization grant may be made from funds set aside by the Board for financial hardship. The amount provided as a separate apportionment shall be adjusted at a future date to assure that hardship funding for the project does not exceed the amount the district was otherwise eligible to receive.

Note: Authority cited: Sections 17070.35, 17072.13 and 17075.15, Education Code.

Reference: Sections 17072.20, 17072.33, 17074.15 and 17074.16, Education Code.

**State Allocation Board  
Implementation Committee  
January 7, 2003**

**Implementation of AB 1506 – Labor Compliance**

**BACKGROUND**

Assembly Bill (AB) 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board (SAB) receive a written finding from the local school board that a labor compliance program (LCP) for the project apportioned under the SFP has been initiated and enforced prior to a release of funds. This requirement is applicable to fund releases made for any SFP new construction or modernization project for which work commenced on or after April 1, 2003.

In addition, the SAB is required to increase the per-pupil grants to reflect the increased costs of the initiation and enforcement of the LCP.

At the November and December SAB Implementation Committee meetings, the Office of Public School Construction (OPSC) presented discussion papers. As a result of the discussions, it became clear that very few districts currently have a LCP and the districts will require assistance to carryout the requirements of this legislation. As a result of this need, a workgroup was established that has met on several occasions to develop a model LCP and a companion guidebook for use by applicant school districts.

**PROPOSALS**

*Affected Projects*

Prior to receiving a fund release, a district shall be required to make the certification as described in Labor Code Section 1771.7 if both of the following circumstances exist:

- The district has a project which received and apportionment from the funding provided in Proposition 47, and
- The Notice to Proceed for the construction phase of a project has been or will be issued on or after April 1, 2003.

Therefore, applications that receive funding from Proposition 47, and are for projects in which the Notice to Proceed for the construction phase of the project will be issued on or after April 1, 2003, will be required to make the certification on the Fund Release Authorization, Form SAB 50-05. This will mean that projects funded on or after the December 18, 2002 SAB meeting, which the district signed or signs contracts and immediately submitted its Form SAB 50-05 but then issues its Notice to Proceed on or after April 1, 2003, are still subject to the requirements of this law.

*Implementation*

With input received from the SAB Implementation Committee AB 1506 Workgroup, the Department of Industrial Relations is recommended to develop a model Labor

Compliance Program model and companion guidebook for use by applicant school districts. The purpose of the model LCP and guidebook will be the following:

- To assist Districts in preparing a program which meets the requirements on Labor Code Section 1771.5 (b).
- To assist Districts in obtaining timely approval of the LCP by the Department of Industrial Relations, if that is necessary.

The model LCP and guidebook contains at least the following elements:

- Introduction to AB 1506
- Benefits of a Comprehensive LCP
- LCP Components
- Steps to Obtain DIR Certification/Approval for your LCP, if necessary
- District Staff Responsibilities
- Guidelines for Prevailing Wage and Certified Payroll
- Guidelines for Enforcement
- Contact and Resource Information
- Commonly Used Terms
- Public Works Process Emphasizing LCP Actions Flowchart
- LCP Checklist
- Model LCP Manual
- Third Party Providers Checklist

#### *Grant Increase*

AB 1506 requires the SAB to increase the per pupil grant amounts in EC Section 17072.10 and 17074.10 to accommodate the State's share of the increased cost of new construction and modernization projects due to the initiation and enforcement of a labor compliance program.

The grant increases shall be made to any new construction or modernization SFP projects, funded or unfunded, which are subject to the requirements of AB 1506.

#### *Emergency Regulations*

The SAB shall adopt the proposed regulations as emergency regulations on the basis that fund releases will not be made to affected projects after April 1, 2003, and that failure to fund projects in a timely manner will adversely affect the students and faculty to be housed in the projects.

#### **RECOMMENDATION**

Present the attached proposed regulation amendments to the SAB.

## LABOR CODE

**1771.5.** (a) Notwithstanding Section **1771**, an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a **labor** compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a **labor** compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state **labor** law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

Amend Section 1859.2 as follows:

Section 1859.2. Definitions.

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

"Academic Achievement" means to improve one's ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

"Act" means the Leroy F. Greene School Facilities Act of 1998.

"Adjacent" means the HSAs that will make up the Super HSA are adjoining, touching, or share a common geographical boundary.

"Alternative District Owned Site" means a district owned site that is deemed available for the project by the California Department of Education.

"Application" means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

"Apportionment" shall have the meaning set forth in Education Code Section 17070.15(a).

"Approved Application(s)" means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 09/02); SAB 50-02, *Existing School Building Capacity*, (Revised 09/02); SAB 50-03, *Eligibility Determination*, (Revised 09/02); and SAB 50-04, *Application for Funding*, (Revised 09/02), as appropriate, and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

"Approved Application for Joint-Use Funding" means a district has submitted an *Application for Joint-Use Funding*, Form SAB 50-07 (New 09/02), including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

"Attendance Area" shall have the meaning set forth in Education Code Section 17070.15(b).

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

"CBEDS Report" means the enrollment information provided through the California Basic Education Data System by school districts to the CDE.

"California Department of Education" (CDE) means the offices within that department that have responsibility for school facilities matters.

"CDE Source School List" means a list developed and published by the CDE that identifies districts and Critically Overcrowded Schools pursuant to Education Code Section 17078.18(c).

"CEC" means the California Energy Resources, Conservation and Development Commission.

"Certification" means the act of affirmatively representing, asserting or verifying circumstances, data or information as required by the Act or this subgroup.

"Childcare" means any program that is operated less than 24-hours per day, in which non-medical, licensed care and supervision are provided to children in a group setting.

"Class B Construction Cost Index" is a construction factor index that is provided monthly by Marshall and Swift, for the Western area, for structures made of reinforced concrete or steel frames, concrete floors, and roofs, and accepted and used by the Board.

"Classroom" means a teaching station that has the same meaning as the term used in Education Code Section 17071.25(a)(1).

"Classroom-Based Instruction" shall have the meaning set forth in Education Code Section 47612.5(e)(1).

"Classroom Provided" means a classroom acquired by lease, lease-purchase, or purchase for which a contract has been signed for the construction or acquisition of the classroom.

"Committee" shall have the meaning set forth in Education Code Section 17070.15(e).

"Comprehensive High School" means a high school that serves grades 7-12 or 9-12 that offers a variety of curricula, including common courses that emphasize academic achievement and traditional subjects that all students are required to take.

"County Fund" shall have the meaning set forth in Education Code Section 17070.15(j).

"Critically Overcrowded School (COS)" means a school that has a pupil population density greater than 115 pupils per useable acre in grades Kindergarten through six, or a pupil population density greater than 90 pupils per useable acre in grades seven through twelve based on the 2001 CBEDS enrollment.

"Current Replacement Cost" means \$346.60 per square foot for Toilet Facilities and \$192.60 per square foot for all other spaces. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

"Department" shall have the meaning set forth in Education Code Section 17070.15(d).

"District Representative" means a member of a school district staff or other agent authorized to serve as

"District Representative" to execute and file an application with the Board on behalf of the district and/or act as liaison between the Board and the district.

"Division of the State Architect (DSA)" means the State office within the Department of General Services that reviews school building plans and specifications for structural, fire safety and access compliance.

"Elementary School Pupil" means a student housed in a school serving Kindergarten through sixth grade, or any combination of Kindergarten through sixth grade.

"Encumbered for Specific Purposes" means a commitment of funds by the school district to meet a legally binding obligation.

"Energy Audit" means an energy analysis and report which sets forth the utility savings that could be generated if the proposed project was designed, constructed, and equipped with energy efficiency and renewable technologies that would make the proposed project exceed the minimum building energy-efficiency standards mandated for new public buildings pursuant to the applicable California Building Standards Code.

"Energy Efficiency Account" means the funds set aside by the Board for purposes of Education Code Section 17077.35.

"EnergyPro 3.1" means a computer program approved by the CEC that calculates energy efficiency standards.

"Environmental Hardship" means the State funding for site acquisition as authorized by Section 1859.75.1.

"Excessive Cost Hardship Grant" means the funding provided by Section 1859.83.

"Executive Officer" means the individual appointed by the Governor to direct the Office of Public School Construction, and who concurrently serves as Executive Officer to the Board.

"Existing School Building Capacity" means the district's total capacity to house pupils as calculated pursuant to Sections 1859.30 through 1859.33.

"Extra Cost" means the added costs to complete a Type II Joint-Use Project as determined in Section 1859.125.1.

"Facility" means all or a portion of any real property, site improvements, utilities and/or buildings or other improvements contained in the project.

"Facility Hardship" means new or replacement facilities authorized by Section 1859.82 (a) or (b).

"Field Act Facility" means a school building meeting the requirements contained in Education Code Section 17280, et seq.

"Final Apportionment" means an apportionment made pursuant to Education Code Section 17070.15 by submittal of an application pursuant to Section 1859.21.

"Final Apportionment Unfunded List" means a list of projects where the entire Final Apportionment request was not converted to a Final Apportionment.

Financial Hardship" means State funding for all or a portion of the district's matching share required by Section 1859.77.1 or 1859.79.

"Form SAB 50-01" means the *Enrollment Certification/Projection*, Form SAB 50-01 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-02" means the *Existing School Building Capacity*, Form SAB 50-02 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-03" means the *Eligibility Determination*, Form SAB 50-03 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-04" means the *Application For Funding*, Form SAB 50-04 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-05" means the *Fund Release Authorization*, Form SAB 50-05 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-06" means the *Expenditure Report*, Form SAB 50-06 (Revised 09/02), which is incorporated by reference.

"Form SAB 50-07" means the *Application For Joint-Use Funding*, Form SAB 50-07 (New 09/02), which is incorporated by reference.

"Form SAB 50-08" means the *Application For Preliminary Apportionment*, Form SAB 50-08 (New 09/02), which is incorporated by reference.

"Fund" shall have the meaning set forth in Education Code Section 17070.15(i).

"General Location" means the proposed location of a new school as set forth in Education Code Section 17078.22 and Section 1859.142.

"Governmental Agency" shall include but is not limited to a public entity as defined in Government Code Section 7260(a) including California federally recognized or historically established tribal governments.

"High School Attendance Area (HSAA)" means an attendance area that serves a currently operated high school, other than a continuation school or a community school.

"High School District" means a school district that serves any combination of grades seven through twelve exclusively.

"High School Pupil" means a student in a school serving ninth through twelfth grade or any combination of ninth through twelfth grade.

"Higher Education" means an entity that is a public community college; a public college; a public university; or a non-profit/accredited organization of higher education.

"In Escrow, Governmental Entities" means the approval and signature of instrument(s) that will convey a specified school parcel or site from the public/government entity including the federal government for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"In Escrow, Non-Governmental Entities" means the deposit of signed instrument(s) and/or funds with instructions with a title company or escrow agent to carry out the provisions of an agreement or contract to acquire a specified school parcel or site for a determinable sum, and for a determinable date of acquisition which may be based on the district's receipt of funding from the State.

"Inadequate" means, for purposes of Joint-Use Projects, the square footage of the existing facility is less than 60 percent of the square footage entitlement shown in the Chart in Section 1859.124.1.

"Independent Audit" means an examination and report of the district's accounts by a certified public accounting firm.

"Individual with Exceptional Needs" shall have the meaning set forth in Education Code Section 56026 as further defined and classified in 34 Code of Federal Regulations Part 300.5.

"Instrument" means a written, legally enforceable agreement, approved and signed by all parties to the escrow, for the conveyance to the district of real estate for a specified parcel or site, that includes a compensation clause and either a purchase option agreement, a purchase agreement, promissory note, lease agreement, installment sales contract, gift, or other real estate conveyance valid in the State of California for property conveyed from a public/government entity, including the federal government.

"Interim Housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities.

"Joint-Use Project" means a project approved by the Board pursuant to Education Code Sections 17050, 17051, or 17077.40.

"Joint-Use Partner(s)" means an entity or entities that has entered into a joint-use agreement pursuant to the provisions of Education Code Section 17077.42.

"Large New Construction Project" means a funding application request for at least 200 New Construction Grants which will be used to construct a new Comprehensive High School or an addition to a Comprehensive High School.

"Large Modernization Project" means a funding application request for Modernization Grant(s) that exceed 50 percent of the current CBEDS enrollment of a Comprehensive High School that will be modernized.

"Lease-Purchase Program (LPP)" means the Leroy F. Greene State School Building Lease-Purchase Law of 1976, commencing with Education Code Section 17000.

"Major Maintenance" shall have the meaning set forth in Education Code Section 17070.77(b).

"Material Inaccuracy" means any falsely certified eligibility or funding application related information submitted by school districts, architects or other design professionals that allowed the school district an advantage in the funding process.

"Median Cost" means, for purposes of a Preliminary Apportionment, the middle number in a given sequence of property value numbers, or the average of the middle two property value numbers when the given sequence of property value numbers has an even number of numbers.

"Mello-Roos Bonds" means the bonds that are authorized under the provisions of the Mello-Roos Community Facilities Act of 1982, commencing with Government Code Section 53311.

"Middle School Pupil" means a student in a school serving sixth through eighth grade, or seventh and eighth grades.

"Modernization" shall have the meaning set forth in Education Code Section 17070.15(f) for purposes of projects subject to Subgroup 5.5, Article 2, commencing with Section 1859 or Education Code Section 17021 under the Lease-Purchase Program.

"Modernization Adjusted Grant" means the Modernization Grant, plus any other funding provided by these Regulations.

"Modernization Grant" means the funding provided pursuant to Education Code Section 17074.10(a) and Sections 1859.78, 1859.78.3 and 1859.78.6.

"Modernization Eligibility" means the result of the calculation contained in either Option A or B of the Form SAB 50-03.

"Multi-Track Year-Round Education (MTYRE)" means a school education program in which the students are divided into three or more groups on alternating tracks, with at least one group out of session, and the other groups in session during the same period.

"New Construction Adjusted Grant" means the New Construction Grant, plus any other funding provided by these Regulations.

"New Construction Eligibility" means the result of the calculation determined in Education Code Section 17071.75.

"New Construction Grant" means the funding provided pursuant to Education Code Section 17072.10(a) and Sections 1859.71 and 1859.71.1.

"Nonclassroom-Based Instruction" shall have the meaning set forth in Education Code Section 47612.5(d)(1) and (e)(2).

"Non-Profit Organization" means an entity that is organized and operated for purposes of not making a profit under the provisions of the Revenue and Taxation Code.

"Non-Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs not defined in Education Code Section 56030.5 but included in 34 Code of Federal Regulations Part 300.5.

"Office of Public School Construction (OPSC)" means the State office within the Department of General Services that assists the Board as necessary and administers the Act on behalf of the Director.

"Permanent Area" means any area not included in a portable classroom.

"Permanent Classroom" means any classroom not meeting the definition of portable classroom.

"Phase C Approval" means the construction approval by the Board under the Lease-Purchase Program.

"Phase One Environmental Site Assessment (POESA)" shall have the meaning set forth in Education Code Section 17210(g).

"Phase P Approval" means the planning approval by the Board under the Lease-Purchase Program.

"Phase S Approval" means the site approval by the Board under the Lease-Purchase Program.

"Portable Classroom" shall have the meaning set forth in Education Code Section 17070.15(k).

"Preliminary Endangerment Assessment (PEA)" shall have the meaning set forth in Education Code Section 17210(h).

"Preliminary Application" means the district has submitted Form SAB 50-08, including all documents that are required to be submitted with the application as identified in the General Information Section of that Form to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Apportionment" means an apportionment made pursuant to Education Code Section 17078.10(c).

"Preliminary Plans" means a set of architectural drawings not approved by the DSA that provide a preliminary design.

"Priority One" shall have the meaning set forth in Education Code Section 17017.7(a)(1).

"Priority Two" shall have the meaning set forth in Education Code Section 17017.7(a)(2).

"Property" shall have the meaning set forth in Education Code Section 17070.15(g).

"Proposition 1A" means the Initiative Measure (Prop. 1A) enacted by passage at the November 4, 1998 general election.

"Proposition 39" means the Initiative Measure (Prop. 39) enacted by passage at the November 7, 2000 general election which amended Sections 15102, 15106, 35233, and 72533 and added Chapter 1.5 (commencing with Section 15264) to Part 10, of the Education Code, and added applicable sections of the California Constitution relating to passage of local school bonds with a 55 percent vote of the electorate at a primary or general election, a regularly scheduled local election, or a statewide special election.

"Proposition 47" means the Kindergarten-University Public Education Facilities Bond Act of 2002.

"Pupil" means a student enrolled in any grade Kindergarten through grade twelve.

"Qualifying Pupils" means enrollment in excess of 86 pupils per useable acre for Kindergarten through sixth grade or 68 pupils per useable acre for grades seven through twelve.

"Quarterly Basis" means a three-month period commencing on January 1, April 1, July 1 and October 1 of each calendar year.

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

"Rehabilitation Cost" means health and safety mitigation cost that is less than 50 percent of the current replacement cost of the facility.

"Remedial Action Plan (RAP)" means a plan approved by the Department of Toxic Substances Control (DTSC) pursuant to Health and Safety Code Section 25356.1.

"Resource Specialist Program" means pupils that meet the definition of Non-Severely Disabled Individual with Exceptional Needs as defined in Section 1859.2 that are not enrolled in a special day class.

"Response Action (RA)" means the removal of hazardous materials and solid waste, the removal of hazardous substances, and other remedial actions in connection with hazardous substances at the site.

"Restricted Fund" means the funds in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account approved for a Preliminary Apportionment(s).

"School Building Capacity" shall have the meaning set forth in Education Code Section 17070.15(l).

"School District" shall have the meaning set forth in Education Code Section 17070.15(h).

"School Facilities Improvement District" means a legal entity authorized by Education Code Section 15300, to generate school facilities funding.

"School Facility Program (SFP)" means either the new construction or modernization programs implemented under the Act, by these Subgroup 5.5 regulations.

"SFP New Construction Account" means the fund for new construction projects authorized by Sections 100620(a)(1) and 100820(a)(1).

"Secondary School Pupil" means a student in the seventh through the twelfth grade.

"Section" means a section in these Subgroup 5.5 regulations.

"Severely Disabled Individual with Exceptional Needs" means an individual with exceptional needs as defined in Education Code Section 56030.5.

"Small School District" means a school district with districtwide enrollment reported in Part A, the continuation high pupils reported in Part B, and the special day class pupils reported in Part C on the latest Form SAB 50-01, used to determine or adjust the district's baseline eligibility pursuant to Sections 1859.50 and 1859.51 or submitted separately to the OPSC, that is 2,500 or less.

"Source School" means a Critically Overcrowded School included on the CDE Source School List that has Qualifying Pupils.

"Special Day Class" means a class that has pupils enrolled that are individuals with exceptional needs.

"Square Footage" means the enclosed area measured from the outside face of exterior structural walls of the building. For interior areas or portions of building areas, the enclosed area shall be measured from the centerline of the interior demising wall.

"Student Yield Factor" means the number of students each dwelling unit will generate for purposes of an enrollment augmentation.

"Substantial Enrollment Requirement (SER)" means a district that is operating on a Multi-Track Year-Round Education basis pursuant to Education Code Sections 17017.6 and 17017.7(c).

"Super High School Attendance Area (Super HSAA)" means two or more HSAA's that are adjacent to each other.

"Teacher Education" means courses for credential programs or enhancement courses that are professional growth courses for elementary, secondary, higher education and special education instructors.

"Toilet Facilities" means restroom area, shower/locker area or physical therapy area for Individuals with Exceptional Needs.

"Type I Joint-Use Project" means a project that meets the criteria of Education Code Section 17077.40(b)(1).

"Type II Joint-Use Project" means a project that meets the criteria of Education Code Section 17077.40(b)(2).

"Type III Joint-Use Project" means a project that meets the criteria of Education Code Section 17077.40(b)(3).

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

"Unrestricted Fund" means the funds in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account not approved for a Preliminary Apportionment(s).

"Useable Acres" means the gross acreage of a school site less any portion of the site publicly dedicated for off-site street improvements and any portion of the site not available for school purposes as determined by the CDE because of topological impediments or because of other unique circumstances.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17074.10, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17280, 47612.5(d)(1)and(e)(2), 47612.5(e)(1), and 56026, Education Code. Section 53311, Government Code.

**STATE ALLOCATION BOARD**

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



**Date:** January 27, 2002

**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 Friday, February 7, 2003 (9:30 am-3:30 pm) at the US Bank Plaza, 980 9<sup>th</sup> Street, Conference Room A, B & C, Sacramento CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Critically Overcrowded Schools Program:
  - a) Advance Fund Releases (Planning and Site)
  - b) Qualifying Pupil Calculation
  - c) SFP Criteria
  - d) Previous LPP, SFP Apportionments
3. AB 1506 Grant Increase

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 Portia Jacobson at (916) 445-3159.

BRUCE B. HANCOCK  
Chairperson

BBH:pj

**State Allocation Board Implementation Committee  
February 7, 2003**

**Critically Overcrowded School Facilities**

PURPOSE OF REPORT

This issue paper is in response to certain district concerns that were never finalized. To that end it discusses options and regulation modifications for the Critically Overcrowded School Facilities (COS) program regarding the following issues:

- **Preliminary Apportionment Eligibility Criteria - Changes to COS application filing criteria for projects with prior apportionments**
- **Preliminary Apportionment Fund Releases - Early release of COS reservations**
- **Conversion of Preliminary Apportionment - Preliminary to Final Apportionment eligibility re-justification**

**1. Preliminary Apportionment Eligibility Criteria  
(Regulation Sections 1859.142 and 1859.145):**

BACKGROUND

The Board's emergency regulations allow districts to apply for a preliminary apportionment for a project if all of the following criteria are met:

- (a) The district has demonstrated that it has School Facility Program (SFP) new construction.
- (b) The project for which the district is requesting funding has not received an apportionment under the Lease-Purchase Program (LPP), the SFP or other Proposition 1A funds.
- (c) At least 75 percent of the number of pupils requested on the *Application for Preliminary Apportionment* (Form SAB 50-08) are Qualifying Pupils from a Source School(s) as determined in Section 1859.143
- (d) The General Location of a proposed school meets the criteria of Education Code 17078.22(a)(3) or (b).

ISSUE

Current COS regulations preclude districts that have previously received a design or site acquisition apportionment from applying in the COS program. Certain districts request that the criteria for filing a COS preliminary application allow for projects that have previously received apportionments, other than construction, to file for the COS program.

The Office of Public School Construction (OPSC) has the following concerns with these types of projects:

- There are currently 412 projects with design and separate site acquisition apportionments; allowing these projects to apply under the COS represents a potentially significant increase in the number of potential COS projects that could strain the available COS funds.

- The circumvention of substantial progress timelines for design and site acquisition apportionments made under other programs, specifically for projects which have received a separate site acquisition apportionment.
- Projects that have already received site acquisition apportionments are considered to be very close to submittal of a construction funding application, typically within 12 to 18 months; and therefore not viable candidates for the COS program.

An option that could be considered, other than the current regulation process is to allow districts with design apportioned projects to file under the COS program. The OPSC staff believes it is appropriate to allow districts with previous design apportionments to apply for the COS program. The rationale is that districts may have made different SFP program decisions had the COS program been authorized in law and available.

## RECOMMENDATIONS

1. Allow districts with previous design apportionments approved prior to April 29, 2002 to concurrently apply for the COS program by modifying Regulation Section 1859.142 to permit districts with projects that have received a design apportionment prior to April 29, 2002, to apply for a COS Preliminary Apportionment. Please see Attachment A.
2. Modify Regulation Section 1859.145 to offset previously apportioned amounts from the COS Preliminary Apportionment. Please see Attachment A.
3. For previous apportionments under the SFP, modify Regulation Section 1859.105 to include the receipt of a COS preliminary apportionment for a project as an acceptable substantial progress criteria. Please see Attachment A.

## **2. Preliminary Apportionment Fund Releases (Regulation Section 1859.153):**

### BACKGROUND

The COS program does not provide for a release of state funds from a preliminary apportionment, which serves only as a reservation of funds for future State assistance in the form of grants when the project converts to a final apportionment. Once the preliminary apportionment is converted to a final apportionment pursuant to Section 1859.150, the district may request a release of funds as prescribed in Section 1859.90.

### ISSUE

Some districts maintain they have a great need to utilize separate design and site acquisition funding to advance their projects. It is the districts contention they are not able to apply for COS funding.

The OPSC staff acknowledges the COS regulations do not provide for an early release of preliminary apportionment provisions. Per legal counsel, the statute does not provide the SAB with the authority to make advance fund releases. Staff counsel further opined that this section only authorizes reservations of COS facility account funds, prior to converting to a final apportionment.

Districts have many options available to consider for advancing their projects. They may apply under the SFP and utilize the environmental and financial hardship provisions. Districts, which have or would need to rely on and utilize environmental and financial hardship provisions, are encouraged to apply under the COS if interim financing can be arranged. The COS preliminary apportionments are sufficient collateral and may be used to secure interim financing for the project. Furthermore, the State Treasurers office is examining the feasibility of a more attractive interim financing program for qualified districts.

### RECOMMENDATION

Pursuant to legal counsel opinion, current regulations are appropriate as per statute.

### **3. Conversion of Preliminary Apportionment (Regulation Section 1859.147):**

#### BACKGROUND

The COS program specifies that a preliminary apportionment can be made in advance of full compliance with all of the application requirements and that the final apportionment will be determined when the project has complied with all the criteria for an apportionment. The COS program provides guidance and clarification to districts in this regard and indicates: "When a Preliminary Apportionment is converted to a Final Apportionment, all the following criteria must be met:

- (a) The district must have current New Construction Eligibility sufficient to support at least 75 percent of the pupils the district requested and received the Preliminary Apportionment.
- (b) The Final Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (c) A district seeking to convert a Preliminary Apportionment to a Final Apportionment shall complete and file Form SAB 50-04, which requests funding for at least 75 percent, but not more than 100 percent, of the pupils the district requested and received the Preliminary Apportionment.

It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required by Section 1859.142(c) at the time the application is converted to a Final Apportionment.

If the district is unable to meet the criteria in this Section, the Preliminary Apportionment shall be rescinded pursuant to the provisions of Section 1859.148."

#### ISSUE

Some districts maintain they need assurance that once they qualify for COS preliminary funding for a specific project that they can complete that project even if they no longer have sufficient eligibility to justify the original project. These districts maintain they could potentially build a school, but not receive state funding to support it due to an eligibility loss. In addition, these districts indicate their ability to demonstrate the 75 percent rule may change over the four to five years it takes to build a school.

The issue expressed is not unique to the COS or various other OPSC programs. The risk a district faces from effects of eligibility changes are the same for the COS or SFP programs. When an application is presented to the SAB, it must be supported by current SFP eligibility and conform to the regulation criteria in effect at the time the application is on file with the OPSC. On the other hand, districts do not need to continue to justify source school eligibility when converting a preliminary apportionment to a final apportionment. Regulation Section 1859.147 currently indicates, "It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required in Section 1859.142(c) at the time the application is converted to a Final Apportionment."

#### RECOMMENDATION

Staff maintains current regulations are appropriate to statute.

## ATTACHMENT A

### Section 1859.105. Program Accountability Progress Audit.

- (a) When the district has received funds for a SFP project, the Board shall conduct a review to assure the district has made substantial progress in the completion of the project pursuant to Education Code Section 17076.10(b). The review shall consist of an analysis of the district's progress report in accordance with Section 1859.104(b). Sufficient evidence of substantial progress shall be any of the following:
- (1) At least 75 percent of all site development work that is necessary prior to building construction activity is complete.
  - (2) At least 90 percent of the building construction activities are under contract, unless the building construction activities are delayed as a result of necessary site development work.
  - (3) All construction activities are at least 50 percent complete.
  - (4) Other evidence satisfactory to the Board of circumstances beyond the control of the district that precludes substantial progress being made.
- (b) When the district has received funds pursuant to Section 1859.81.1(a), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. The audit shall consist of a review and analysis of the district's progress report in accordance with Section 1859.104(b). Acceptable evidence of substantial progress shall be when the district has completed all of the following:
- (1) Obtained the final appraisal of the site.
  - (2) Completed all California Environmental Quality Act requirements.
  - (3) Obtained final approval of the site by the CDE.
  - (4) Provided final escrow instructions or evidence the district has filed condemnation proceedings and intends to request an order of possession of the site.
- (c) When the district has received funds pursuant to Section 1859.81.1(c), the Board shall conduct a review to assure the district has made substantial progress in the completion of the project. Sufficient evidence of substantial progress shall be any of the following:
- (1) An Approved New Construction or Modernization Adjusted Grant Application; or
  - (2) A school district certification that the final building plans for the project have been submitted to and accepted by the DSA for review and approval; or
  - (3) An approved separate site funding application pursuant to Section 1859.81.1(a) or an approved environmental hardship funding application pursuant to Section 1859.75.1 or an approved Preliminary Apportionment pursuant to Section 1859.145; or
  - (4) Other evidence satisfactory to the Board detailing the reason(s) that plans have not been completed and accepted by the DSA. If the Board determines that substantial progress has been made pursuant to Education Code Section 17076.10(b), the Board shall condition its finding of substantial progress upon the district's commitment to complete and submit an Approved New Construction or Modernization Adjusted Grant Application within a period not to exceed 18 months from the date of the Board's determination of substantial progress.

After the Board has received the progress report required in Section 1859.104(b) for items (a), (b), and (c) above, a review and analysis of the report by the OPSC will be made for compliance with this Section within 60 days of the submittal of the report by the district. The OPSC must notify the district within 60 days of the submittal of the report if it intends to recommend to the Board that no substantial progress has been made on the project. If the OPSC does not respond to the district within 60 days of submittal of the report, the OPSC concurs with the district that substantial progress has been made.

Should the OPSC respond within 60 days of submittal of the progress report by the district that no substantial progress has been made or the district fails to submit the progress report within the timelines in Section 1859.104 (b) for items (a), (b), and (c) above or the district has not filed an Approved Application for funds received pursuant to Section 1859.81.1(b), the district must report the final expenditures on the project on the Form SAB 50-06 to the OPSC within 60 days of the OPSC notification. After receipt of the expenditure report, the OPSC will recommend to the Board that a finding be made that no substantial progress on the project has been made and that the apportionment be reduced, after accounting for the district's matching share, by any funds not yet committed by a contract for the project and any interest earned on State funds for the project. The recommendation will be made at the next regularly scheduled Board meeting. If the expenditure report is not received within the 60-day period, the OPSC will recommend that the apportionment be rescinded and any interest earned on State funds be returned to the State.

If the apportionment is reduced or rescinded as a result of a finding by the Board that no substantial progress has been made on the project, the pupils assigned to the project will be added to the district's baseline eligibility. If the apportionment was reduced, the adjustment to the baseline eligibility shall reflect any funding retained by the district based on the New Construction or Modernization Adjusted Grant funding provided for the project. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

Note: Authority cited: Sections 17070.35 and 17072.13, Education Code.

Reference: Sections 17070.35, 17076.10 and 17077.40, Education Code.

Section 1859.142. Preliminary Apportionment Eligibility Criteria.

A district may apply for a Preliminary Apportionment by submittal of Form SAB 50-08 if all of the following criteria are met:

- (a) The district has demonstrated that it has SFP new construction eligibility under Education Code Section 17071.75.
- (b) The project for which the district is requesting funding has not received an apportionment under the LPP, the SFP or other Proposition 1A funds, with the exception of apportionments prior to April 29, 2002 pursuant to Section 1859.81.1(c).
- (c) At least 75 percent of the number of pupils requested on Form SAB 50-08 are Qualifying Pupils from a Source School(s) as determined in Section 1859.143.
- (d) The General Location of a proposed school meets the criteria of Education Code Section 17078.22(a)(3) or (b).

If the proposed school will serve a combination of elementary school pupils and middle school pupils, the General Location of the school for purposes of (d) above shall be based on the highest grade served.

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

Reference: Sections 17078.18 and 17078.22, Education Code.

Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
  - (1) \$5,226.82 for each elementary school pupil.
  - (2) \$5,533.65 for each middle school pupil.
  - (3) \$7,225.94 for each high school pupil.
  - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
  - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
  - (1) The district has requested an increase for multilevel construction pursuant to (b) above.
  - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined by multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.
  - (3) The value of the property as determined in Section 1859.145.1(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

- (h) For purposes of COS projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For purposes of Charter School projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all CSFP Preliminary Applications received no later than March 31, 2003.
- (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
- (j) If the district received an apportionment pursuant to Section 1859.81.1(c) an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.  
The amounts shown in (a) shall be adjusted annually in a manner prescribed in Section 1859.71.

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

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

**State Allocation Board  
Implementation Committee  
February 7, 2003**

**Implementation of AB 1506  
Grant Adjustments for Labor Compliance Programs**

**BACKGROUND**

Assembly Bill (AB) 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board (SAB) receive a written finding from the local school board that a labor compliance program (LCP) for the project apportioned under the SFP has been initiated and enforced prior to a release of funds. This requirement is applicable to fund releases made for any SFP new construction or modernization project for which work commenced on or after April 1, 2003.

In addition, the SAB is required to increase the per-pupil grant amounts in EC Section 17072.10 and 17074.10 to accommodate the State's share of the increased cost of new construction and modernization projects due to the initiation and enforcement of a labor compliance program. The increases must be effective by July 1, 2003.

**DISCUSSION**

At the January 2003 meeting, the State Allocation Board approved proposed regulations relating to the fund release requirements for projects which fall under the requirements of AB 1506. The Board must now address the grant increases related to the LCP requirement.

*Eligible Projects*

All SFP new construction and modernization projects funded from the proceeds of Proposition 47, and which the district certifies on a fund release form that the Notice to Proceed (NTP) was issued on or after April 1, 2003 will be eligible for the grant adjustment. Those projects that received an apportionment prior to the adoption of regulations creating the grant increase shall be eligible for an additional apportionment in the amount of the grant adjustment for the State portion of the cost of the required LCP.

*Grant Adjustment Amount*

The cost of a labor compliance program is related to three major activities: initiation, monitoring and enforcement. Cost information relative to initiation and monitoring has been received from two sources which is summarized on the Attachment.

Initiation (Start-up): Activities related to the design and installation of systems to monitor such things as certified payroll reports, labor classifications and project staffing. All projects will require this initial effort, but once completed for one project, the start up effort and cost will be significantly less or even nonexistent for subsequent projects. The cost for this activity will not vary significantly due to differences in project cost, complexity or duration. The estimates received to date indicate that this cost could be roughly \$10 to \$20 thousand for the initial project.

## **DISCUSSION** (cont.)

Monitoring: Activities related to the on-going oversight and compliance review of labor law requirements. These activities are the 'heart' of a labor compliance program. The time, and thus the cost, of these activities are largely determined by the duration and the size (cost) of the project. On a monthly basis, the number of contractors and workers on the project will influence the hourly requirements. The total time commitment will be determined by the duration of the project, which is frequently, but not always, relative to the cost of the project. The estimates received to date generally attempt to determine the monthly hours of the project based on the size, and then project the total hours based on the contract duration. Hourly rates depend on the task, and vary from clerical at \$45 to professional (inspector) at \$85. Accounting at \$60 is also a major component, and may make up the majority of the hours used.

Enforcement: There is no data available to OPSC on this requirement at this time. The enforcement activities, such as the withholding of payments to contractors, required hearings and even legal assistance, generally only occur when there are labor law violations. It does not seem practical to attempt to include these costs in the per pupil grants for two reasons:

- They will not occur at all on the large majority of projects.
- On projects when they do occur, it is impossible to predetermine the cost, which can range from little or nothing to the costs associated with protracted legal disputes.

Because of the project-by-project nature of these costs, it may be necessary to simply add a small amount to all grants for enforcement. In the majority of cases, the funding will not be used for that purpose, and in those where it is needed, it may be more or even significantly less than the actual cost.

## **PROPOSALS**

- Develop a sliding scale of per-pupil grant adjustments which is based on the total value of the State grant for the project, including site development and all other adjustments and indexes. Include the estimated duration of the project as a factor in the scale.
- Develop additional proposals after further discussion at the Committee meeting.

Parties with knowledge in these LCP costs are encouraged to submit per pupil cost data to the SAB Implementation Committee Chair and to the OPSC. Comments and additional data regarding the information contained on the Attachment are also welcomed.

## LABOR CODE

1771.7. (a) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(b) This section shall apply to public works that commence on or after April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board may not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts as described in Sections 17072.10 and 17074.10 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

## LABOR CODE

**1771.5.** (a) Notwithstanding Section **1771**, an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a **labor** compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a **labor** compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state **labor** law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

# ATTACHMENT

State Allocation Board Implementation Committee  
February 7, 2003

## Implementation of AB 1506 Grant Adjustments for Labor Compliance Programs

### NEW CONSTRUCTION PROJECTS

Using Estimate Number 1								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
HS Addition	\$16,500,000	63,000	18 months	540	\$82,875	\$153.47	\$76.74	0.50%
New Elem	\$15,000,000	65,000	16 months	900	\$75,225	\$83.58	\$41.79	0.50%
New High School	\$17,000,000	85,000	18 months	1,200	\$85,000	\$70.83	\$35.42	0.50%
New Middle School	\$25,000,000	150,000	35 months	1,500	\$102,000	\$68.00	\$34.00	0.41%
New High School	\$75,000,000	325,000	37 months	3,500	\$297,500	\$85.00	\$42.50	0.40%

Using Estimate Number 2								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 2	Per Pupil		
HS Addition	\$16,500,000	63,000	18 months	540	\$60,320	\$111.70	\$55.85	0.37%
New Elem	\$15,000,000	65,000	16 months	900	\$55,840	\$62.04	\$31.02	0.37%
New High School	\$17,000,000	85,000	18 months	1,200	\$60,320	\$50.27	\$25.13	0.35%
New Middle School	\$25,000,000	150,000	35 months	1,500	\$137,600	\$91.73	\$45.87	0.55%
New High School	\$75,000,000	325,000	37 months	3,500	\$351,520	\$100.43	\$50.22	0.47%

Estimate No. 1      Written estimate using 'not to exceed' figures. The basic hourly rate used was \$85. The firm also proposed a 'start up' fee of 0.15% per project. This was not added in to the estimates because used hours, if any, were to be applied to the fee. Thus, there may be an additional amount above the not to exceed amount in some cases.

Estimate No. 2      For the first \$10 million in contract cost, and for each additional \$10 million of cost: 8 hr of inspection at \$80 and 8 hrs of accounting at \$60. The consultant also advised a 'start up' cost of from \$10 to \$20 thousand per project. \$20 thousand was added to each of the estimates above.

# ATTACHMENT

State Allocation Board Implementation Committee  
February 7, 2003

## Implementation of AB 1506 Grant Adjustments for Labor Compliance Programs

### MODERNIZATION PROJECTS

Using Estimate Number 1								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
A* Intermediate	\$5,600,000	72,408		992	\$39,747	\$40.07	\$24.04	0.71%
BV High	\$2,000,000	28,199		405	\$15,479	\$38.22	\$22.93	0.77%
C High	\$1,200,000	21,189		237	\$11,631	\$49.08	\$29.45	0.97%
H Elem	\$1,900,000	24,477		531	\$13,436	\$25.30	\$15.18	0.71%
R Elem	\$2,400,000	29,784		475	\$16,349	\$34.42	\$20.65	0.68%
S Elem	\$2,400,000	35,310		744	\$19,383	\$26.05	\$15.63	0.81%
<b>Totals</b>	<b>\$15,500,000</b>	<b>211,367</b>		<b>3,384</b>	<b>\$116,025</b>	<b>\$34.29</b>	<b>\$20.57</b>	<b>0.75%</b>

Using Estimate Number 2								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 2	Per Pupil	State Share	% of const cost
A* Intermediate	\$5,600,000	72,408		992	\$50,320	\$50.73	\$30.44	0.90%
BV High	\$2,000,000	28,199		405	\$23,440	\$57.88	\$34.73	1.17%
C High	\$1,200,000	21,189		237	\$23,440	\$98.90	\$59.34	1.95%
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<b>Totals</b>	<b>\$15,500,000</b>	<b>211,367</b>		<b>3,384</b>	<b>\$180,960</b>	<b>\$53.48</b>	<b>\$32.09</b>	<b>1.17%</b>

Estimate No. 1      Written estimate using 'not to exceed' figures. The basic hourly rate used was \$85. The firm also proposed a 'start up' fee of 0.15% per project. This was not added in to the estimates because used hours, if any, were to be applied to the fee. Thus, there may be an additional amount above the not to exceed amount in some cases. In this estimate, the firm gave a quote for all the projects as a single contract. This quote was prorated here for the purpose of the discussion.

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**STATE ALLOCATION BOARD**

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



**Date:** February 24, 2003

**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 Friday, March 7, 2003 (9:30 am-3:30 pm) at the US Bank Plaza, 980 9<sup>th</sup> Street, Conference Room A, B & C, Sacramento CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. AB 1506 Grant Increase
3. Use of New Construction Grants

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 Portia Jacobson at (916) 445-3159.

BRUCE B. HANCOCK  
Chairperson

BBH:pj

**State Allocation Board  
Implementation Committee  
March 7, 2003**

**Implementation of AB 1506  
Grant Adjustments for Labor Compliance Programs**

**BACKGROUND**

Assembly Bill (AB) 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board (SAB) increase the per-pupil grant amounts in EC Section 17072.10 and 17074.10 to accommodate the State's share of the increased cost of new construction and modernization projects due to the initiation and enforcement of a labor compliance program. The increases must be effective by July 1, 2003.

**DISCUSSION**

*Grant Adjustment Amount*

The cost of a labor compliance program is related to three major activities: initiation, monitoring and enforcement.

Initiation (Start-up): Activities related to the design and installation of systems to monitor such things as certified payroll reports, labor classifications and project staffing. All projects will require this initial effort, but once completed for one project, the start up effort and cost will be significantly less or even nonexistent for subsequent projects. The cost for this activity will not vary significantly due to differences in project cost, complexity, or duration. Estimates for this cost range from a maximum of \$5,000 per project in the Community College information to as much as \$20 thousand for the initial project of a multiproject assignment.

Monitoring: Activities related to the on-going oversight and compliance review of labor law requirements. These activities are the 'heart' of a labor compliance program. The time, and thus the cost, of these activities are largely determined by the duration and the size (cost) of the project. On a monthly basis, the number of contractors and workers on the project will influence the hourly requirements. The total time commitment will be determined by the duration of the project, which is frequently, but not always, relative to the cost of the project. The estimates received to date generally attempt to determine the monthly hours of the project based on the size, and then project the total hours based on the contract duration.

Enforcement: The enforcement activities, such as the withholding of payments to contractors, required hearings and even legal assistance, generally only occur when there are labor law violations. The estimates received vary in approach on this subject. One firm excluded the costs altogether, and indicated that such services would be provided at an hourly rate in excess of the quoted fee. Another firm indicated that all work relative to determining the appropriate withholding and advising district legal counsel was included. The Community College proposal indicated that enforcement was not included. However, it was also noted that "violation efforts should be extremely limited." Because of the project-by-project nature of these costs, it may be necessary to simply add a small amount to all grants for enforcement. In the majority of cases, the funding will not be used for that purpose, and in those where it is needed, it may be more or even significantly less than the actual cost.

Staff is indebted to the following persons for assistance with development of this proposal:

Ernie Silva, Consultant for the California Community College Coalition  
Jay Bell, Parsons Brinckerhoff Construction Service, Inc.  
Ted Rozzi, Corona-Norco Unified School District  
Chad Cheatham, CQC Enterprises

## **PROPOSAL**

The sliding scale in the attachment shall be used to determine the amount of the total additional grant to be added to the project. The calculation shall be made as follows:

The total 'adjusted grant' for the project shall be determined without regard to the LCP costs. The total adjusted grant, less any amount for site acquisition shall be used to determine the appropriate LCP adjustment to the project.

The additional LCP funding amount shall be divided by the total number of pupils in the project and the state share of that amount shall be the per-pupil grant increase for the project.

Example: A new construction project for 510 pupils has a total project cost of \$7,500,000 after reducing out the site acquisition amount. Using the chart, the LCP adjustment is 0.61% or \$45,750. The state share at 50% is \$22,875. The per pupil grant increase (state share) is \$44.85.

No project shall receive a total LCP adjustment of less than \$10,000 split between the state and local contribution as appropriate for the program.

Projects apportioned in full from Proposition 47 prior to the enactment of these regulations, and which are required to have an LCP in place at the time of the fund release, request may receive an additional one time apportionment for the costs associated with the LCP as calculated under these regulations.



**State Allocation Board  
Implementation Committee  
March 7, 2003**

**USE OF NEW CONSTRUCTION GRANTS**

**BACKGROUND**

The State Allocation Board (SAB) Implementation Committee discussed "Use of Grants" in October and November 2002 as well as in January 2003; however, consensus was not reached. Proposed emergency regulations were presented to the SAB at its January 2003 meeting. The SAB delayed action in January on adopting any long-term "Use of Grants" regulations and approved provisions for those districts that had planned projects based on the "Use of Grants" regulations if certain criteria are met as follows:

The project plans were accepted by the Division of the State Architect (DSA) prior to January 23, 2003.

The project does not exceed 135 percent of the capacity of the project.

The district does not utilize multi-track year-round education as a method to house its pupils used for the grant.

The Board also requested staff to return the "Use of Grants" item to the SAB Implementation Committee to develop further "Use of Grants" regulation recommendations, and to consider modifying the definition of a gymnasium to include an athletic stadium.

**DISCUSSION**

The OPSC continues to believe that current regulations for "Use of Grants" lead to inappropriate apportionments, large numbers of inadequately housed students, and funding of projects that did not meet the intent of the law. Since December 2000, approximately 48,000 pupils, or in excess of \$315 million in the State's share, have not been utilized to construct additional classroom facilities. Arguments in support of the current regulations centered primarily on the inadequacy of the base grant. Others are currently reviewing the adequacy of grants. Staff believes that the contention of the inadequacy is not justification for the continuation of the "Use of Grants" regulations in its present form. Staff has developed a revised proposal as outlined below.

**PROPOSAL**

***Housing Plans for All "Use of Grant" Requests***

The resolution required in the regulations is to be discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing. The district will not utilize multi-track year-round education as a method to house its pupils used for the grant. The only approvable housing plans to be included in the school board resolutions are as follows:

1. The district will construct or acquire facilities for housing the pupils with funding otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
2. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.

### ***Using Pupils From Another Grade Level***

A district may request new construction grants utilizing grant eligibility determined at a different grade level other than the proposed project subject to the following:

1. The current SFP Regulations order of use will remain (i.e., use the lowest grade level available after utilizing all pupil grants for the proposed project grade level).
2. Special Day Class pupil eligibility cannot be requested to construct facilities for a different grade level.
3. The request does not exceed the capacity of the project, unless the project also includes a request as described below (see *Requesting Excess Pupil Grants*).

### ***Requesting Excess Pupil Grants***

A district may request new construction grants that exceed the capacity of the project subject to the following:

1. When requesting grants for a project at an existing school site that includes no more than eight classrooms and the project includes the construction of a multipurpose, gymnasium or library that does not have an existing or adequate facility of the type being requested.
2. Special Day Class pupil eligibility cannot be requested to construct a multipurpose, gymnasium or library.
3. Existing school sites that have been previously approved for SFP new construction grants for a total of nine or more classrooms may not request this type of "Use of Grants".
4. The amount of excess pupils grants will be limited to no more than the pupils commensurate to the grants necessary to construct the size multipurpose, gymnasium or library as calculated under SFP Facility Hardship, Regulation Section 1859.82(b) (see Attachment A for example).

### ***Grandfathering Provisions***

"Grandfathering" provisions are included as follows:

1. Permit "Use of Grants" requests under Regulation Section 1859.77.2, as amended by the SAB on January 22, 2003, as long as the project plans and specifications were accepted by the DSA prior to January 23, 2003.
2. Include provisions to permit "Use of Grants" requests for excess pupil grants where clear language was included in the local bond that specifically identified the project that the district planned based on the "Use of Grants" regulations in place at that time of the bond election.

### ***Amending Applications or "Use of Grant" Requests***

If a district wishes to amend its application to include or increase its "Use of Grants" request after the submittal to the Office of Public School Construction (OPSC), the district must request in writing that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

### ***Athletic Stadiums***

At its January meeting, the Board requested staff to consider modifying the definition of a gymnasium to include an athletic stadium. After further review, it would appear that these type facilities may be better accommodated by changes to the Joint-Use regulations.

## **RECOMMENDATIONS**

1. Amend Regulation Section 1859.77.2 to expand the "grandfathering" provisions as noted above.
2. Adopt Regulation Section 1859.77.3 to include provisions as outlined above.

## ATTACHMENT A

### USE OF NEW CONSTRUCTION GRANTS

#### Excess Pupil Grants Example

The amount of excess pupils grants will be limited to no more than the pupils commensurate to the grants necessary to construct the size multipurpose, gymnasium or library as calculated under SFP Facility Hardship, Regulation Section 1859.82(b). An example is as follows:

#### EXAMPLE:

A district has an existing K-6 campus with the current CBEDS of 500. The campus has only a 1,000 square foot serving kitchen but does not have a multipurpose room. The district has SFP K-6 eligibility totaling 250 unhoused K-6 pupils and wishes to construct a multipurpose room for this campus.

1. Multiply the current CBEDS for the site by the square footage for the type of facility being requested, pursuant to Section 1859.82(b)<sup>1</sup>.

$$500 \times 5.3 \text{ sq. ft. per pupil} = 2,650 \text{ sq. ft. with a minimum of 4,000 sq. ft.}$$

2. Multiply the product in 1. above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b).

$$4,000 \text{ sq. ft.} \times \$107^2 = \$428,000$$

3. Divide the product in 2. above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.

$$\$428,000 / \$5,840^3 = 73.288 \text{ or } 74 \text{ pupils}$$

The maximum amount of excess pupils that the district may include in its "Use of Grants" request in this example is 74 pupils, plus any adjustments or site development costs that the project would be eligible for otherwise. If the district had also included two classrooms in its project, the maximum number of pupil grants would have been 124 pupils.

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<sup>1</sup> The minimum essential facilities in SFP Regulation Section 1859.82(b) for an elementary school multipurpose room are 5.3 square feet per pupil with a minimum of 4,000 square feet.

<sup>2</sup> \$107 represents the State's 50 percent share only.

<sup>3</sup> \$5,840 represents the State's 50 percent share only for elementary new construction.

**ATTACHMENT**  
**State Allocation Board Implementation Committee**  
**March 7, 2003**

**Total Project increase for AB 1506**

<b>Total Project Cost</b>	<b>factor</b>	<b>low</b>	<b>max</b>	<b>State at 50/50</b>	<b>State at 80/20</b>	<b>State at 60/40</b>
\$1 to \$1, 999,999	1.6	\$10,000	\$32,000	16,000	\$25,600	\$19,200
\$2m to 2,999,999	1.15	\$23,000	\$34,500	17,250	\$27,600	\$20,700
\$3m to \$3,999,999	0.9	\$27,000	\$36,000	18,000	\$28,800	\$21,600
\$4m to 7,999,999	0.61	\$24,400	\$48,800	24,400	\$39,040	\$29,280
\$8m to 9,999,999	0.55	\$44,000	\$55,000	27,500	\$44,000	\$33,000
\$10m to 14,999,999	0.52	\$52,000	\$78,000	39,000	\$62,400	\$46,800
\$15m to \$19,999,999	0.5	\$75,000	\$100,000	50,000	\$80,000	\$60,000
Over \$20m to 100m	0.45	\$90,000	\$450,000	225,000	\$360,000	\$270,000
over \$100 million	0.4					

Notes:

1. The calculation in any category shall not result in an amount less than the maximum in the preceeding level.
2. The minimum for any project shall be \$10,000

**ATTACHMENT**  
**State Allocation Board Implementation Committee**  
**March 7, 2003**

**AB 1506 Grant Adjustments Using Community College Scale**

Grade Level	Classrooms	Grants	Total Project Cost	Const Cost (est)**	1506 Amt	% of Total Project Cost	Per Pupil Adjustment	State	Dist
<b>New Construction 50/50</b>									
sdh-hs	2	11	\$488,812	\$391,050	\$7,782	1.59	\$707.44	\$353.72	\$353.72
hs	4	51	\$1,030,964	\$824,771	\$16,413	1.59	\$321.82	\$160.91	\$160.91
elem	8	200	\$2,592,864	\$2,074,291	\$29,870	1.15	\$149.35	\$74.67	\$74.67
Cont hs	13	108	\$2,801,568	\$2,241,254	\$32,274	1.15	\$298.83	\$149.42	\$149.42
hs	5	135	\$3,864,028	\$3,091,222	\$30,912	0.80	\$228.98	\$114.49	\$114.49
elem	14	510	\$7,537,828	\$6,030,262	\$45,830	0.61	\$89.86	\$44.93	\$44.93
elem	27	675	\$10,029,674	\$8,023,739	\$55,364	0.55	\$82.02	\$41.01	\$41.01
elem	35	987	\$13,636,864	\$10,909,491	\$74,185	0.54	\$75.16	\$37.58	\$37.58
elem	53	1365	\$22,204,060	\$17,763,248	\$111,908	0.50	\$81.98	\$40.99	\$40.99
hs	84	2948	\$113,694,407	\$90,955,526	\$518,446	0.46	\$175.86	\$87.93	\$87.93
<b>Modernization 80/20</b>									
elem		50	\$241,788	\$193,430	\$3,849	1.59	\$76.99	\$61.59	\$15.40
elem		150	\$537,444	\$429,955	\$8,556	1.59	\$57.04	\$45.63	\$11.41
elem		123	\$641,098	\$512,878	\$10,206	1.59	\$82.98	\$66.38	\$16.60
elem		250	\$795,354	\$636,283	\$12,662	1.59	\$50.65	\$40.52	\$10.13
elem		202	\$835,489	\$668,391	\$13,301	1.59	\$65.85	\$52.68	\$13.17
elem		450	\$1,542,831	\$1,234,265	\$23,821	1.54	\$52.94	\$42.35	\$10.59
hs		578	\$2,546,566	\$2,037,253	\$29,336	1.15	\$50.76	\$40.60	\$10.15
elem		579	\$2,621,607	\$2,097,286	\$30,201	1.15	\$52.16	\$41.73	\$10.43
jhs		868	\$3,087,558	\$2,470,046	\$35,569	1.15	\$40.98	\$32.78	\$8.20
hs		1255	\$7,527,532	\$6,022,026	\$43,359	0.58	\$34.55	\$27.64	\$6.91
<b>Modernization 60/40</b>									
elem		50	\$241,788	\$193,430	\$3,849	1.59	\$76.99	\$46.19	\$30.79
elem		150	\$537,444	\$429,955	\$8,556	1.59	\$57.04	\$34.22	\$22.82
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\*\* Assumed to be 80% of the Total Project Cost

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**MODERNIZATION PROJECTS**

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Totals	\$15,500,000	211,367		3,384	\$180,960	\$53.48	\$32.09	1.17%

Estimate No. 1 Written estimate using 'not to exceed' figures. The basic hourly rate used was \$85. The firm also proposed a 'start up' fee of 0.15% per project. This was not added in to the estimates because used hours, if any, were to be applied to the fee. Thus, there may be an additional amount above the not to exceed amount in some cases. In this estimate, the firm gave a quote for all the projects as a single contract. This quote was prorated here for the purpose of the discussion.

Estimate No. 2 For the first \$10 million in contract cost, and for each additional \$10 million of cost: 8 hr of inspection at \$80 and 8 hrs of accounting at \$60. The consultant also advised a 'start up' cost of from \$10 to \$20 thousand per project. \$10 thousand was added to each of the estimates above.

ATTACHMENT  
 Vista Est.  
 State Allocation Board Implementation Committee  
 March 7, 2003

**LABOR COMPLIANCE ESTIMATES #3**

**NEW CONSTRUCTION PROJECTS**

Using Estimate Number 3								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
HS	\$11,000,000		24		\$41,250		\$0.00	0.38%
Oak Elem	\$9,800,000		15		\$25,212		\$0.00	0.26%
Marilyn Elem	\$9,800,000		15		\$25,608		\$0.00	0.26%
Totals	\$30,600,000	0		0	\$92,070		\$0.00	0.30%

**MODERNIZATION PROJECTS**

Using Estimate Number 1								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
Acacemy	\$100,000		4		\$6,512		\$0.00	6.51%
Elem	\$1,100,000		4		\$6,512		\$0.00	0.59%
Elem	\$1,100,000		4		\$6,512		\$0.00	0.59%
Elem	\$700,000		4		\$6,512		\$0.00	0.93%
Casita Center	\$2,500,000		12		\$20,031		\$0.00	0.80%
Lincoln Middle	\$1,100,000		4		\$6,512		\$0.00	0.59%
** Ave	\$1,000,000		12		\$20,031		\$0.00	2.00%
Totals	\$7,600,000	0		0	\$116,025		\$0.00	1.53%

**STATE ALLOCATION BOARD**

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



**Date:** March 21, 2003

**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 Friday, April 4, 2003 (9:30 am-3:30 pm) at the US Bank Plaza, 980 9<sup>th</sup> Street, Conference Room A, B & C, Sacramento CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. SB 575 Grant Survey – Automatic Fire Detection/Alarm System, Automatic Sprinkler System
3. AB 1506 Grant Increase – Labor Compliance Programs
4. Use of New Construction Grants
5. Community Day/Classroom Loading and Funding Methods

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 Portia Jacobson at (916) 445-3159.

BRUCE B. HANCOCK  
Chairperson

A handwritten signature in black ink, appearing to read "Bruce Hancock", with a long horizontal flourish extending to the right.

BBH:LM:pj

**State Allocation Board  
Implementation Committee  
April 4, 2003**

**SENATE BILL 575 SURVEY  
Automatic Fire Detection /Alarm  
and Automatic Sprinkler Requirement**

**BACKGROUND**

Senate Bill (SB) 575, Chapter 725, Statutes of 2001 requires any school district plans for new construction and modernization submitted to the Division of the State Architect on or after July 1, 2002 to include an automated fire detection, alarm, and in certain types of construction, a sprinkler system. This law required the State Allocation Board (SAB) to modify the existing grants for new construction and modernization to cover the costs associated with the purchase and installation of an automatic fire detection alarm and/or sprinkler system. The SAB adopted regulations in June 2002 to include an increase to the per pupil grants for these costs.

A provision in SB 575 requires the SAB to review the adequacy of the per pupil grant adjustments and determine if these adjustments are sufficient. The SAB is required to perform this review prior to July 1, 2003.

**DISCUSSION**

To assist the Office of Public School Construction (OPSC) in reviewing the adequacy of grants for both new construction and modernization, the OPSC has developed a survey, which will be mailed to districts that have received funding under these new fire code provisions to request the cost and square footage of projects that have been bid. Today we are soliciting comments from Committee members and various stakeholders on our proposed survey, which is attached.

# SENATE BILL 575 SURVEY

## Automatic Fire Detection/Alarm and Sprinkler Requirements

The law requires the State Allocation Board (SAB) to review the adequacy of the per pupil grant adjustment pursuant to the Senate Bill (SB) 575 (2001) requirements regarding Automatic Fire Detection/Alarm and/or Automatic Fire Sprinkler System. In order to review the adequacy of the grant, the Office of Public School Construction (OPSC) is conducting a survey to school districts that received SB 575 funding. We would appreciate if you could help the OPSC by providing the following information with regards to your school project(s) that have been bid. Please complete a separate survey for each project.

<small>SCHOOL NAME</small>	<small>PROJECT APPLICATION NO.</small>
----------------------------	--

**1. Schedule of Values with detailed cost allocation breakdown identifying the cost for the following:**

- a. Total cost of Automatic Fire Sprinkler System for all the buildings in the project:..... \$
- b. Total cost of Automatic Fire Detection/Alarm System for all buildings in the project: ..... \$

*Please attach a copy of the schedule of values and/or bid for the work above.*

**2. Total Square footage of the all the buildings in the project that requires the Automatic Fire Sprinkler and/or Automatic Fire Detection/Alarm Systems.**

Square Footage: ..... sq ft

**3. Type of Project:**

<small>INDICATE ONE</small>	<small>NUMBER OF PUPILS ASSIGNED</small>	
<input type="checkbox"/> Elementary	K-6 .....	
<input type="checkbox"/> Middle School	7-8.....	
<input type="checkbox"/> High School	9-12.....	
	Non-Severe.....	
	Severe.....	

**4. Certification:**

*I certify, as the authorized District Representative, that the information reported on this survey form is true and correct.*

<small>PRINT NAME</small>	<small>SIGNATURE</small>	<small>DATE</small>
---------------------------	--------------------------	---------------------

**5. Please mail the completed survey by May 1, 2003 to:**

Office of Public School Construction  
 Attention: Engel Navea  
 1130 K Street, Suite 400  
 Sacramento, CA 95814

*You may contact Engel Navea at 916.681.3630 or Andrew Woo 916.323.3259 with OPSC if you need clarification.*

**State Allocation Board  
Implementation Committee  
April 4, 2003**

**Implementation of AB 1506  
Grant Adjustments for Labor Compliance Programs**

**BACKGROUND**

Assembly Bill (AB) 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board (SAB) increase the per-pupil grant amounts in EC Section 17072.10 and 17074.10 to accommodate the State's share of the increased cost of new construction and modernization projects due to the initiation and enforcement of a labor compliance program. The increases must be effective by July 1, 2003. Proposals regarding the grant increases have been discussed at the February and March 2003 Committee meetings.

**DISCUSSION**

***Grant Adjustment Amount***

The cost of a labor compliance program is related to three major activities: initiation, monitoring and enforcement.

Initiation (Start-up): Activities related to the design and installation of systems to monitor such things as certified payroll reports, labor classifications and project staffing. All projects will require this initial effort, but once completed for one project, the start up effort and cost will be significantly less or even nonexistent for subsequent projects. The cost for this activity will not vary significantly due to differences in project cost, complexity, or duration. Estimates for this cost range from a maximum of \$5,000 per project in the Community College information to as much as \$20 thousand for the initial project of a multiproject assignment.

Monitoring: Activities related to the on-going oversight and compliance review of labor law requirements. These activities are the 'heart' of a labor compliance program. The time, and thus the cost, of these activities are largely determined by the duration and the size (cost) of the project. On a monthly basis, the number of contractors and workers on the project will influence the hourly requirements. The total time commitment will be determined by the duration of the project, which is frequently, but not always, relative to the cost of the project. The estimates received to date generally attempt to determine the monthly hours of the project based on the size, and then project the total hours based on the contract duration.

Enforcement: The enforcement activities, such as the withholding of payments to contractors, required hearings and even legal assistance, generally only occur when there are labor law violations. The estimates received vary in approach on this subject. One firm excluded the costs altogether, and indicated that such services would be provided at an hourly rate in excess of the quoted fee. Another firm indicated that all work relative to determining the appropriate withholding and advising district legal counsel was included. The Community College proposal indicated that enforcement was not included. However, it was also noted that "violation efforts should be extremely limited." Because of the project-by-project nature of these costs, it may be necessary to simply add a small amount to all grants for enforcement. In the majority of cases, the funding will not be used for that purpose, and in those where it is needed, it may be more or even significantly less than the actual cost.

## **DISCUSSION** (cont.)

Staff is indebted to the following persons for assistance with development of this proposal:

- Ernie Silva, Consultant for the California Community College Coalition
- Jay Bell, Parsons Brinckerhoff Construction Service, Inc.
- Ted Rozzi, Corona-Norco Unified School District
- Chad Cheatham, CQC Enterprises

## **PROPOSAL**

The sliding scale in the attachment shall be used to determine the amount of the total additional grant to be added to the project. The calculation shall be made as follows:

- The total 'adjusted grant' for the project shall be determined without regard to the LCP costs. The total adjusted grant, less any amount for site acquisition shall be used to determine the appropriate LCP adjustment to the project.
- The additional LCP funding amount shall be divided by the total number of pupils in the project and the state share of that amount shall be the per-pupil grant increase for the project.

Example: A new construction project for 510 pupils has a total project cost of \$7,500,000 after reducing out the site acquisition amount. Using the chart, the LCP adjustment is 0.61% or \$45,750. The state share at 50% is \$22,875. The per pupil grant increase (state share) is \$44.85.

No project shall receive a total LCP adjustment of less than \$15,000 split between the state and local contribution as appropriate for the program.

Projects apportioned in full from Proposition 47 prior to the enactment of these regulations, and which are required to have an LCP in place at the time of the fund release, request may receive an additional one time apportionment for the costs associated with the LCP as calculated under these regulations.

**ATTACHMENT**  
**State Allocation Board Implementation Committee**  
**April 4, 2003**

**Total Project increase for AB 1506**

<b>Total Project Cost</b>	<b>factor</b>	<b>low</b>	<b>max</b>	<b>State at 50/50</b>	<b>State at 80/20</b>	<b>State at 60/40</b>
\$1 to \$1, 999,999	1.6	\$15,000	\$32,000	16,000	\$25,600	\$19,200
\$2m to 2,999,999	1.15	\$23,000	\$34,500	17,250	\$27,600	\$20,700
\$3m to \$3,999,999	0.9	\$27,000	\$36,000	18,000	\$28,800	\$21,600
\$4m to 7,999,999	0.61	\$24,400	\$48,800	24,400	\$39,040	\$29,280
\$8m to 9,999,999	0.55	\$44,000	\$55,000	27,500	\$44,000	\$33,000
\$10m to 14,999,999	0.52	\$52,000	\$78,000	39,000	\$62,400	\$46,800
\$15m to \$19,999,999	0.5	\$75,000	\$100,000	50,000	\$80,000	\$60,000
Over \$20m to 100m	0.45	\$90,000	\$450,000	225,000	\$360,000	\$270,000
over \$100 million	0.4					

Notes:

1. The calculation in any category shall not result in an amount less than the maximum in the preceeding level.
2. The minimum for any project shall be \$15,000

**ATTACHMENT**  
**State Allocation Board Implementation Committee**  
**April 4, 2003**

**AB 1506 Grant Adjustments Using Community College Scale**

Grade Level	Classrooms	Grants	Total Project Cost	Const Cost (est)**	1506 Amt	% of Total Project Cost	Per Pupil Adjustment	State	Dist
<b>New Construction 50/50</b>									
sdh-hs	2	11	\$488,812	\$391,050	\$7,782	1.59	\$707.44	\$353.72	\$353.72
hs	4	51	\$1,030,964	\$824,771	\$16,413	1.59	\$321.82	\$160.91	\$160.91
elem	8	200	\$2,592,864	\$2,074,291	\$29,870	1.15	\$149.35	\$74.67	\$74.67
Cont hs	13	108	\$2,801,568	\$2,241,254	\$32,274	1.15	\$298.83	\$149.42	\$149.42
hs	5	135	\$3,864,028	\$3,091,222	\$30,912	0.80	\$228.98	\$114.49	\$114.49
elem	14	510	\$7,537,828	\$6,030,262	\$45,830	0.61	\$89.86	\$44.93	\$44.93
elem	27	675	\$10,029,674	\$8,023,739	\$55,364	0.55	\$82.02	\$41.01	\$41.01
elem	35	987	\$13,636,864	\$10,909,491	\$74,185	0.54	\$75.16	\$37.58	\$37.58
elem	53	1365	\$22,204,060	\$17,763,248	\$111,908	0.50	\$81.98	\$40.99	\$40.99
hs	84	2948	\$113,694,407	\$90,955,526	\$518,446	0.46	\$175.86	\$87.93	\$87.93
<b>Modernization 80/20</b>									
elem		50	\$241,788	\$193,430	\$3,849	1.59	\$76.99	\$61.59	\$15.40
elem		150	\$537,444	\$429,955	\$8,556	1.59	\$57.04	\$45.63	\$11.41
elem		123	\$641,098	\$512,878	\$10,206	1.59	\$82.98	\$66.38	\$16.60
elem		250	\$795,354	\$636,283	\$12,662	1.59	\$50.65	\$40.52	\$10.13
elem		202	\$835,489	\$668,391	\$13,301	1.59	\$65.85	\$52.68	\$13.17
elem		450	\$1,542,831	\$1,234,265	\$23,821	1.54	\$52.94	\$42.35	\$10.59
hs		578	\$2,546,566	\$2,037,253	\$29,336	1.15	\$50.76	\$40.60	\$10.15
elem		579	\$2,621,607	\$2,097,286	\$30,201	1.15	\$52.16	\$41.73	\$10.43
jhs		868	\$3,087,558	\$2,470,046	\$35,569	1.15	\$40.98	\$32.78	\$8.20
hs		1255	\$7,527,532	\$6,022,026	\$43,359	0.58	\$34.55	\$27.64	\$6.91
<b>Modernization 60/40</b>									
elem		50	\$241,788	\$193,430	\$3,849	1.59	\$76.99	\$46.19	\$30.79
elem		150	\$537,444	\$429,955	\$8,556	1.59	\$57.04	\$34.22	\$22.82
elem		123	\$641,098	\$512,878	\$10,206	1.59	\$82.98	\$49.79	\$33.19
elem		250	\$795,354	\$636,283	\$12,662	1.59	\$50.65	\$30.39	\$20.26
elem		202	\$835,489	\$668,391	\$13,301	1.59	\$65.85	\$39.51	\$26.34
elem		450	\$1,542,831	\$1,234,265	\$23,821	1.54	\$52.94	\$31.76	\$21.17
hs		578	\$2,546,566	\$2,037,253	\$29,336	1.15	\$50.76	\$30.45	\$20.30
elem		579	\$2,621,607	\$2,097,286	\$30,201	1.15	\$52.16	\$31.30	\$20.86
jhs		868	\$3,087,558	\$2,470,046	\$35,569	1.15	\$40.98	\$24.59	\$16.39
hs		1255	\$7,527,532	\$6,022,026	\$43,359	0.58	\$34.55	\$20.73	\$13.82

\*\* Assumed to be 80% of the Total Project Cost

**NEW CONSTRUCTION PROJECTS**

Using Estimate Number 1								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
HS Addition	\$16,500,000	63,000	18 months	540	\$82,875	\$153.47	\$76.74	0.50%
New Elem	\$15,000,000	65,000	16 months	900	\$75,225	\$83.58	\$41.79	0.50%
New High School	\$17,000,000	85,000	18 months	1,200	\$85,000	\$70.83	\$35.42	0.50%
New Middle School	\$25,000,000	150,000	35 months	1,500	\$102,000	\$68.00	\$34.00	0.41%
New High School	\$75,000,000	325,000	37 months	3,500	\$297,500	\$85.00	\$42.50	0.40%

Using Estimate Number 2								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 2	Per Pupil	State Share	% of const cost
HS Addition	\$16,500,000	63,000	18 months	540	\$60,320	\$111.70	\$55.85	0.37%
New Elem	\$15,000,000	65,000	16 months	900	\$55,840	\$62.04	\$31.02	0.37%
New High School	\$17,000,000	85,000	18 months	1,200	\$60,320	\$50.27	\$25.13	0.35%
New Middle School	\$25,000,000	150,000	35 months	1,500	\$137,600	\$91.73	\$45.87	0.55%
New High School	\$75,000,000	325,000	37 months	3,500	\$351,520	\$100.43	\$50.22	0.47%

Estimate No. 1 Written estimate using 'not to exceed' figures. The basic hourly rate used was \$85. The firm also proposed a 'start up' fee of 0.15% per project. This was not added in to the estimates because used hours, if any, were to be applied to the fee. Thus, there may be an additional amount above the not to exceed amount in some cases.

Estimate No. 2 For the first \$10 million in contract cost, and for each additional \$10 million of cost: 8 hr of inspection at \$80 and 8 hrs of accounting at \$60. The consultant also advised a 'start up' cost of from \$10 to \$20 thousand per project. \$20 thousand was added to each of the estimates above.

**MODERNIZATION PROJECTS**

Using Estimate Number 1								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
A* Intermediate	\$5,600,000	72,408		992	\$39,747	\$40.07	\$24.04	0.71%
BV High	\$2,000,000	28,199		405	\$15,479	\$38.22	\$22.93	0.77%
C High	\$1,200,000	21,189		237	\$11,631	\$49.08	\$29.45	0.97%
H Elem	\$1,900,000	24,477		531	\$13,436	\$25.30	\$15.18	0.71%
R Elem	\$2,400,000	29,784		475	\$16,349	\$34.42	\$20.65	0.68%
S Elem	\$2,400,000	35,310		744	\$19,383	\$26.05	\$15.63	0.81%
Totals	\$15,500,000	211,367		3,384	\$116,025	\$34.29	\$20.57	0.75%

Using Estimate Number 2								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 2	Per Pupil	State Share	% of const cost
A* Intermediate	\$5,600,000	72,408		992	\$50,320	\$50.73	\$30.44	0.90%
BV High	\$2,000,000	28,199		405	\$23,440	\$57.88	\$34.73	1.17%
C High	\$1,200,000	21,189		237	\$23,440	\$98.90	\$59.34	1.95%
H Elem	\$1,900,000	24,477		531	\$23,440	\$44.14	\$26.49	1.23%
R Elem	\$2,400,000	29,784		475	\$30,160	\$63.49	\$38.10	1.26%
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Estimate No. 2 For the first \$10 million in contract cost, and for each additional \$10 million of cost: 8 hr of inspection at \$80 and 8 hrs of accounting at \$60. The consultant also advised a 'start up' cost of from \$10 to \$20 thousand per project. \$10 thousand was added to each of the estimates above.

ATTACHMENT  
Vista Est.  
State Allocation Board Implementation Committee  
April 4, 2003

**LABOR COMPLIANCE ESTIMATES #3**

**NEW CONSTRUCTION PROJECTS**

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Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
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Oak Elem	\$9,800,000		15		\$25,212		\$0.00	0.26%
Marilyn Elem	\$9,800,000		15		\$25,608		\$0.00	0.26%
Totals	\$30,600,000	0		0	\$92,070		\$0.00	0.30%

**MODERNIZATION PROJECTS**

Using Estimate Number 1								
Project	Cost	Sq. Ft.	Duration	Capacity	Estimate 1	Per Pupil	State Share	% of const cost
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Elem	\$1,100,000		4		\$6,512		\$0.00	0.59%
Elem	\$1,100,000		4		\$6,512		\$0.00	0.59%
Elem	\$700,000		4		\$6,512		\$0.00	0.93%
Casita Center	\$2,500,000		12		\$20,031		\$0.00	0.80%
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** Ave	\$1,000,000		12		\$20,031		\$0.00	2.00%
Totals	\$7,600,000	0		0	\$116,025		\$0.00	1.53%

**State Allocation Board  
Implementation Committee Meeting  
April 4, 2003**

**Fee Schedule for California Community Colleges**

Worksheet for estimating the cost per project if your district/agency uses WCS-FCCC for LCP phase II (Implementation/monitoring)

Insert your construction budget below

Estimated fee for your project

Project Construction Cost	Fee % Low**	Fee % High**	Construction Budget	Fee(based on Fee% low)***
Fee range for less than \$1 mil project	1.99%	2.34%	\$500,000	\$9,950
Fee range for \$1 to \$2 mil project	1.93%	2.27%	\$ -	\$ -
Fee range for \$2 to \$3 mil project	1.44%	1.70%	\$ -	\$ -
Fee range for \$3 to \$4 mil project	1.00%	1.18%	\$ -	\$ -
Fee range for \$4 to \$5 mil project	0.86%	1.01%	\$ -	\$ -
Fee range for \$5 to \$6 mil project	0.76%	0.90%	\$ -	\$ -
Fee range for \$6 to \$7 mil project	0.72%	0.85%	\$ -	\$ -
Fee range for \$7 to \$8 mil project	0.71%	0.84%	\$ -	\$ -
Fee range for \$8 to \$9 mil project	0.69%	0.81%	\$ -	\$ -
Fee range for \$9 to \$10 mil project	0.68%	0.81%	\$ -	\$ -
Fee range for \$10 to \$11 mil project	0.68%	0.80%	\$ -	\$ -
Fee range for \$11 to \$12 mil project	0.68%	0.80%	\$ -	\$ -
Fee range for \$12 to \$13 mil project	0.67%	0.78%	\$ -	\$ -
Fee range for \$13 to \$14 mil project	0.65%	0.77%	\$ -	\$ -
Fee range for \$14 to \$15 mil project	0.64%	0.76%	\$ -	\$ -
Fee range for \$15 to \$16 mil project	0.64%	0.75%	\$ -	\$ -
Fee range for \$16 to \$17 mil project	0.63%	0.74%	\$ -	\$ -
Fee range for \$17 to \$18 mil project	0.62%	0.73%	\$ -	\$ -
Fee range for \$18 to \$19 mil project	0.62%	0.73%	\$ -	\$ -
Fee range for \$19 to \$20 mil project	0.61%	0.72%	\$ -	\$ -
Fee range for \$20 to \$22 mil project	0.61%	0.71%	\$ -	\$ -
Fee range for projects \$22 mil and over	0.57%	0.64%	\$ -	\$ -

\*Please note for projects less than \$1 mil, project fee shall be a minimum of \$1,000 per month for the life of the project.

\*\*Please note all Enforcement services are not included in this percentage fee and shall be invoiced on an hourly basis, as the enforcement is an intangible service and can not be quantified FCCC will be working with additional 3rd party vendors to guarantee quality and pricing for these services as well.

\*\*\*Please note, the fee % low is based off the assumption that FCCC-WCS has 5 projects for Phase II per 6 region in California. If this criteria is not met, the fee % will be between fee % low and fee % high. We anticipate that in all likelihood, we will meet this requirement and thus will be able to offer the lower fee.

**State Allocation Board  
Implementation Committee  
April 4, 2003**

**USE OF NEW CONSTRUCTION GRANTS**

**BACKGROUND**

The State Allocation Board (SAB) Implementation Committee discussed "Use of Grants" in October and November 2002 as well as in January 2003. Proposed emergency regulations were presented to the SAB at its January 2003 meeting. The SAB delayed action in January on adopting any long-term "Use of Grants" regulations and approved provisions for those districts that had planned projects if certain criteria are met as follows:

- The project plans were accepted by the Division of the State Architect (DSA) prior to January 23, 2003.
- The project does not exceed 135 percent of the capacity of the project.
- The district does not utilize multi-track year-round education as a method to house its pupils used for the grant.

The Board also requested staff to return the "Use of Grants" item to the SAB Implementation Committee for further discussion. Staff presented a discussion item to the March 2003 Committee meeting and has prepared the draft regulations for April 2003 Committee meeting.

**DISCUSSION**

The OPSC continues to believe that current regulations for "Use of Grants" lead to inappropriate apportionments, large numbers of inadequately housed students, and funding of projects that did not meet the intent of the law. Since December 2000, approximately 50,135 pupils, or in excess of \$330 million in the State's share for the base grant amounts, have not been utilized to construct additional classroom facilities. Arguments in support of the current regulations centered primarily on the inadequacy of the base grant. Others are currently reviewing the adequacy of grants. Staff believes that the contention of the inadequacy is not justification for the continuation of the "Use of Grants" regulations in its present form. Staff has developed a revised proposal as outlined below.

**PROPOSAL**

***Housing Plans for All "Use of Grant" Requests***

The resolution required in the regulations is to be discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing. The district will not utilize multi-track year-round education as a method to house its pupils used for the grant. The only approvable housing plans to be included in the school board resolutions are as follows:

1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or,
2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or,
3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.

### ***Using Pupils From Another Grade Level***

A district may request new construction grants utilizing grant eligibility determined at a different grade level other than the proposed project subject to the following:

1. The current SFP Regulations order of use will remain (i.e., use the lowest grade level available after utilizing all pupil grants for the proposed project grade level).
2. Special Day Class (SDC) pupil eligibility cannot be requested to construct facilities for a different grade level.
3. The request does not exceed the capacity of the project, unless the project also includes a request as described below (see *Requesting Excess Pupil Grants*).

### ***Requesting Excess Pupil Grants***

A district may request new construction grants that exceed the capacity of the project subject to the following:

1. When requesting grants for a project at an existing school site, that was not constructed under the SFP, that includes zero to no more than eight classrooms and the project includes the construction of a multipurpose, gymnasium and/or library that does not have an existing or adequate facility of the type being requested. The square footage of the existing facility is less than 60 percent of the square footage necessary to construct the size multipurpose, gymnasium or library as calculated under SFP Facility Hardship, Regulation Section 1859.82(b).
2. SDC pupil eligibility cannot be requested to construct a multipurpose, gymnasium or library, with the exception of county of education projects building a SDC facility.
3. Existing school sites, which were not constructed under the SFP, that were previously approved for SFP new construction grants for an addition to that site for a total of no more than eight classrooms (including the classrooms in the current project) may request this type of "Use of Grants".
4. The amount of excess pupils grants will be limited to no more than the pupils commensurate to the grants necessary to construct the size multipurpose, gymnasium or library as calculated under SFP Facility Hardship, Regulation Section 1859.82(b) (see Attachment A for example).

### ***Grandfathering Provisions***

"Grandfathering" provisions are included as follows:

1. Permit "Use of Grants" requests under Regulation Section 1859.77.2, as amended by the SAB on January 22, 2003, as long as the project plans and specifications were accepted by the DSA prior to January 23, 2003.
2. Include provisions to permit "Use of Grants" requests for excess pupil grants where clear language was included in the local bond that specifically identified the project that the district planned based on the "Use of Grants" regulations in place at that time of the bond election.

### ***Amending Applications or "Use of Grant" Requests***

If a district wishes to amend its application to include or increase its "Use of Grants" request after the submittal to the Office of Public School Construction (OPSC), the district must request in writing that the application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

### **RECOMMENDATIONS**

1. Amend Regulation Section 1859.77.2 to expand the "grandfathering" provisions as noted above.
2. Adopt Regulation Section 1859.77.3 to include provisions as outlined above (see Attachment B).

## ATTACHMENT A

### USE OF NEW CONSTRUCTION GRANTS

#### Excess Pupil Grants Example

The amount of excess pupils grants will be limited to no more than the pupils commensurate to the grants necessary to construct the size multipurpose, gymnasium or library as calculated under SFP Facility Hardship, Regulation Section 1859.82(b). An example is as follows:

#### EXAMPLE:

A district has an existing K-6 campus with the current CBEDS of 400. The district is planning to demolish one classroom and construct an addition of five classrooms to the school site. The campus has only a 1,000 square foot serving kitchen but does not have a multipurpose room. The district has SFP K-6 eligibility totaling 250 unhoused K-6 pupils and wishes to construct a multipurpose room for this campus.

1. Multiply the current CBEDS for the site plus the Net School Building Capacity<sup>1</sup> of the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b)<sup>2</sup>.

$$400 + 100 = 500$$

$$500 \times 5.3 \text{ sq. ft. per pupil} = 2,650 \text{ sq. ft. with a minimum of 4,000 sq. ft.}$$

2. Multiply the product in 1. above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b).

$$4,000 \text{ sq. ft.} \times \$107^3 = \$428,000$$

3. Divide the product in 2. above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.

$$\$428,000 / \$5,840^4 = 73.288 \text{ or } 74 \text{ pupils}$$

The maximum amount of excess pupils that the district may include in its "Use of Grants" request in this example is 74 pupils, plus any adjustments or site development costs that the project would be eligible for otherwise. Since the district has also included five classrooms in its project, the maximum number of pupil grants included in the application would be 199 pupils (125 + 74).

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<sup>1</sup> Net School Building Capacity is defined in the SFP Regulations.

<sup>2</sup> The minimum essential facilities in SFP Regulation Section 1859.82(b) for an elementary school multipurpose room are 5.3 square feet per pupil with a minimum of 4,000 square feet.

<sup>3</sup> \$107 represents the State's 50 percent share only.

<sup>4</sup> \$5,840 represents the State's 50 percent share only for elementary new construction.

## ATTACHMENT B

### USE OF NEW CONSTRUCTION GRANTS

Amend Section 1859.77.2 as follows:

Section 1859.77.2. Use of New Construction Grant Funds for Projects Accepted by the DSA on or before January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA on or before January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that do not to exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the grant requests above 100 percent of the number of pupils to be housed do not include eligibility based on Special Day Class pupils and if the district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:
  - (1) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.
  - (2) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
  - (3) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
- (b) A district may ~~request~~ utilize new construction grant eligibility determined at a different grade level than the proposed project that do not exceed 135 percent of the number of pupils that will be housed in the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations subject to all the following:
  - (1) The district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the Application filing that includes the following:
    - (A) A plan that identifies how the district has housed or will house the excess pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan may not include housing the excess pupils in portables excluded from existing school building capacity pursuant to Education Code Section 17071.30 or housing in facilities to be constructed with district funds if the district has received financial hardship approval pursuant to Section 1859.81. The plan shall not utilize Multi-track Year Round Education schedules for the purposes of housing excess pupils.
    - (B) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (C) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
  - (2) The district must use its New Construction Grant eligibility, pursuant to subsections (b) ~~and (d)~~, in the following order:
    - (A) At the grade level of the proposed project.
    - (B) At the lowest grade level other than the proposed project.
    - (C) At the next highest grade level other than the proposed project.
- (3) Special Day Class pupil eligibility cannot be requested to construct facilities for a different grade level.

(c) A district may request new construction eligibility based on the SFP regulations for the Use of New Construction Grant Funds in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project that the district planned based on the SFP Regulations in place at that time.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

Adopt Section 1859.77.3 as follows:

Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35 and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
- (1) The district must submit an adopted school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      1. The district will construct or acquire facilities for housing the pupils with funding otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds;  
or
      2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
  - (2) The existing school site was not constructed under the SFP.
  - (3) The proposed project includes no more than eight classrooms.
  - (4) If the existing school site was previously approved for SFP new construction grants for an addition to that site, the addition(s) include a total of no more than eight classrooms, including the classrooms in the proposed project.
  - (5) The grants requests above 100 percent of the number of pupils to be housed do not include eligibility based on Special Day Class pupils, with the exception of county of education projects building a Special Day Class facility.
  - (6) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b).

- (7) The maximum excess pupil amount being requested for this type of Use of Grants request, is calculated by the following:
- (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b).
  - (B) Multiply the product in (1)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b).
  - (C) Divide the product in (1)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
- (1) The district has adopted a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
- (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
  - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
  - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
    - 1. The district will construct or acquire facilities for housing the pupils with funding otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds;  
or
    - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
    - 3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
- (2) The district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
- (A) At the grade level of the proposed project, if available.
  - (B) At the lowest grade level other than the proposed project, if available.
  - (C) At the next highest grade level other than the proposed project.
- (3) Special Day Class pupil eligibility cannot be requested to construct facilities for a different grade level.
- (c) A district may request new construction eligibility based on the SFP regulations for the Use of New Construction Grant Funds in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project that the district planned based on the SFP Regulations in place at that time.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

**State Allocation Board  
Implementation Committee  
April 4, 2003**

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND  
CONTINUATION HIGH SCHOOL REPORT**

BACKGROUND

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

- Continuation High Schools
- Community Day Schools
- County Community Schools
- County Community Day Schools

In addition, ECS 17072.17 requires the DGS, as a result of this review, to recommend modifications to the current method of school facility funding for alternative education schools, as it deems appropriate. Although the law specifically requires the review of school facility funding methods for the construction and modernization of alternative education schools, the law did not grant the authority to change the per-pupil funding for these pupils but granted the authority to modify the pupil loading of these classrooms. The SAB Legal Counsel has opined that to modify the funding for these pupils will require further legislation.

SUMMARY OF REPORT FINDINGS

The purpose of this report is to make recommendations that will meet the unique educational requirements and capital outlay facility needs for alternative education schools. The review of current funding methodology and analysis of the alternative education program requirements indicated that alternative education schools typically need multipurpose type of space that serve several purposes, such as cafeteria/prep kitchen, assembly, physical education, computer lab and library. Alternative education schools need and want the use of non-classroom space that is not typically included in traditional schools; such as small group instruction, storage, counseling offices, and computer science. The analysis of survey results and the review of recent School Facility Program (SFP) projects do not support full sized gymnasiums, kitchens, and libraries.

The following is a summary of the report recommendations regarding the appropriate classroom loading and funding methodologies for these alternative education schools:

- Consider changing the classroom loading standards for Alternative Education Schools from 27/25 pupils to 18 pupils.

- Consider developing a new school allowance and small school allowance for these Alternative Education Schools.
- Consider community day, county community, and county community day schools' capital outlay facility needs the same for purposes of State funding.

**DISCUSSION**

*Loading of Alternative Education Schools*

The Adhoc Committee created to assist the OPSC with obtaining information to develop this report did through its discussions believe that a reduction in the current loading standards of classrooms in the SFP is required to accommodate children attending alternative education schools. The report recommends a loading of 18 pupils per classroom. Based upon the survey results, the analysis of current SFP projects, and the input from the Adhoc Committee members, the OPSC supports the reduction of pupil loading to 18 pupils per classroom. If the pupil loading is lowered to 18 pupils per classroom, and without the ability to increase the pupil grants, the OPSC needed to ensure that the base grant was adequate to build a classroom. Utilizing square footage amounts from a study recently done by the OPSC, the OPSC does believe that the 18 pupil grants will generate enough funding to build a classroom as indicated by the following:

Middle/High School Classroom Cost Per Square Foot Represents State/District Apportionment				Middle/High School Pupil Grant Represents State/District Apportionment					
Cost	x	Avg. Sq. Ft. of Classroom from Report	=	Total Cost for One Classroom at 100%	Pupil Loading	x	Base Grant for Middle/High	=	Total Cost of One Classroom at 100%
\$131		1,030		\$141,110	18		\$6,177		\$222,372
					18		\$8,086		\$291,096

A reduction of the loading standards for alternative education schools will require an adjustment to District's eligibility baseline similar to the process performed for Special Day Class pupils.

*Funding Methodologies of Alternative Education Schools*

Under the SFP all school districts are entitled to a base grant, additional funding for site acquisition/development, multistory construction, and additional allowances referred to as "excessive cost hardship grants". Alternative education schools are eligible to receive all of the above-mentioned grants and additional allowances. However, some of the allowances may not be appropriate for these types of schools since they do not have the same needs for support facilities as a traditional school.

One of the report's recommendations is to consider developing a new school allowance for alternative education schools. The New School Allowance provided under SFP Regulation 1859.83 (c) was created to assist new schools that are phasing in a master planned school to ensure enough funding for a larger than initially needed support facilities are built to support future growth. Furthermore, the new school allowance that is provided to a district is intended to be offset against future construction at that site. However, the OPSC does not believe that the alternative education schools will be adding significant number of classrooms to these schools, as indicated by discussions with the Adhoc Committee members who stated that these types of schools should have limited number of classrooms at each site. Additionally, if the averages of the space in the analysis of SFP projects were used an average community day school would include five classrooms and an average continuation high would include 10 classrooms. This supports the need to provide these alternative education schools with their own "new school allowance", in lieu of the new school excessive cost hardship grant currently provided is not appropriate for community day, and continuation high schools.

Attached is a copy of a proposed cost and square footage chart for support facilities for alternative education schools. This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage amounts from the Facility Hardship chart under Regulation 1859.82 (3).

#### PROPOSAL

1. Change the current loading standards to 18 pupils per classroom.
2. Adopt a new method to fund support facilities for both community day and continuation high schools.
3. Amend/adopt regulations.

#### RECOMMENDATIONS

1. Amend Regulation Section 1859.1 to include the new loading standards.
2. Amend Regulation Section 1859.83 (c).
3. Add Regulation Section 1859. 73.3, New Construction Additional Grant for Support Facilities for Alternate Education Schools

### ATTACHMENT

These allowances are based on the High School Pupil allowance for replacement facilities in the Facility Hardship regulations (Section 1859.82). The Multipurpose Facility category has been modified to allow for the option of a gymnasium in lieu of the multipurpose facility; 1,000 square feet from this category has been redirected to create a new category for counseling offices, small group areas and conference rooms; and the minimum square footage is linked to the number of classrooms in the New Construction application.

Add Regulation Section 1859.73.3 as follows:

Facility	Project contains 1 or 2 classrooms	Project contains 3 to 10 classrooms	Project contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	None	6.3 sq. ft. per pupil minimum 4,000 sq. ft. for an application	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

**STATE ALLOCATION BOARD**

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



**Date:** April 22, 2003

**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 Friday, May 2, 2003 (9:30 am - 3:30 pm) at the California Department of Education (new building), 1430 N Street, Conference Room 1101 (1<sup>st</sup> floor), Sacramento, CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Continuation High, Community Day and County Community Schools Classroom Loading and Funding Methods
3. SAB/OPSC Processes for Lease-Lease Back Projects
4. SAB Implementation Committee Correspondence Process

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

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**STATE ALLOCATION BOARD**

1130 K Street, Suite 400

Sacramento, CA 95814

<http://www.dgs.ca.gov/opsc>



**State Allocation Board  
IMPLEMENTATION COMMITTEE  
PENDING ITEMS LIST**

May 2, 2003

**A. FUTURE ITEMS**

Facilitation of a separate meeting for Overcrowding vs. Growth

**B. SUSPENDED ITEMS**

Seismic Retrofit Policies and Funding

**STATE ALLOCATION BOARD**

1130 K Street, Suite 400

Sacramento, CA 95814

<http://www.dgs.ca.gov/opsc>**Implementation Committee  
2003 MEETING CALENDAR****Tuesday, January 7, 2003**

US Bank Plaza

980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento**Friday, February 7, 2003**

US Bank Plaza

980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento**Friday, March 7, 2003**

US Bank Plaza

980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento**Friday, April 4, 2003**

US Bank Plaza

980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento**Friday, May 2, 2003**

Department of Education

1430 N Street, Board Room  
Sacramento**Friday, June 6, 2003**

Sacramento - TBD

**Wednesday, July 2, 2003**

Department of Education

1430 N Street, Board Room  
Sacramento**Friday, August 1, 2003**

Department of Education

1430 N Street, Board Room  
Sacramento**Friday, September 5, 2003**

Department of Education

1430 N Street, Board Room  
Sacramento**Friday, October 3, 2003**

Department of Education

1430 N Street, Board Room  
Sacramento**Friday, November 7, 2003**

Sacramento - TBD

**Friday, December 5, 2003**

Department of Education

1430 N Street, Board Room  
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.

Meeting locations will be forthcoming.

**State Allocation Board  
Implementation Committee  
May 2, 2003**

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND  
CONTINUATION HIGH SCHOOL REPORT**

BACKGROUND

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

Continuation High Schools  
Community Day Schools  
County Community Schools  
County Community Day Schools

In addition, ECS 17072.17 requires the DGS, as a result of this review, to recommend modifications to the current method of school facility funding for alternative education schools, as it deems appropriate. Although the law specifically requires the review of school facility funding methods for the construction and modernization of alternative education schools, the law did not grant the authority to change the per-pupil funding for these pupils but granted the authority to modify the pupil loading of these classrooms. The State Allocation Board (SAB) Legal Counsel has opined that to modify the funding for these pupils will require further legislation.

SUMMARY OF REPORT FINDINGS

The purpose of this report is to make recommendations that will meet the unique educational requirements and capital outlay facility needs for alternative education schools. The review of current funding methodology and analysis of the alternative education program requirements indicated that alternative education schools typically need multipurpose type of space that serve several purposes, such as cafeteria/prep kitchen, assembly, physical education, computer lab and library. Alternative education schools need and want the use of non-classroom space that is not typically included in traditional schools; such as small group instruction, storage, counseling offices, and computer science. The analysis of survey results and the review of recent School Facility Program (SFP) projects do not support large scale gymnasiums, kitchens, and libraries.

The following is a summary of the report recommendations regarding the appropriate classroom loading and funding methodologies for these alternative education schools:

Consider changing the classroom loading standards for Alternative Education Schools from 27/25 pupils to 18 pupils.

Consider developing a new school allowance and small school allowance for these Alternative Education Schools.

Consider community day, county community, and county community day schools' capital outlay facility needs the same for purposes of State funding.

DISCUSSION

*Loading of Alternative Education Schools*

The Adhoc Committee created to assist the OPSC with obtaining information to develop this report did through its discussions believe that a reduction in the current loading standards of classrooms in the SFP is required to accommodate children attending alternative education schools. The report recommends a loading of 18 pupils per classroom. Based upon the survey results, the analysis of current SFP projects, and the input from the Adhoc Committee members, the OPSC supports the reduction of pupil loading to 18 pupils per classroom. If the pupil loading is lowered to 18 pupils per classroom, and without the ability to increase the pupil grants, the OPSC needed to ensure that the base grant provide enough funding to build a classroom. Utilizing square footage amounts from a study recently done by the OPSC, the OPSC does believe that the 18 pupil grants will generate enough funding to build a classroom as indicated by the following chart:

<b>ESTIMATED COST FOR ONE CLASSROOM</b>									
<b>Middle/High School Classroom Cost Per Square Foot Represents State/District Apportionment</b>					<b>Middle/High School Pupil Grant Represents State/District Apportionment</b>				
Cost Sq. Ft.	x	Avg. Sq. Ft. of Classroom from Report	=	Total Cost for One Classroom at 100%	Pupil Loading	x	Base Grant for Middle/ High	=	Total Cost of One Classroom at 100%
\$131*		1,030		\$141,110	18		\$6,177		\$222,372
					18		\$8,086		\$291,096

\* This sq. ft. cost includes soft costs

A reduction of the loading standards for alternative education schools will require an adjustment to District’s eligibility baseline similar to the process performed for Special Day Class pupils.

*Funding Methodologies of Alternative Education Schools*

Under the SFP all school districts are entitled to a base grant, additional funding for site acquisition/development, multistory construction, new school, and additional allowances referred to as “excessive cost hardship grants”. Alternative education schools are eligible to receive all of the above-mentioned grants and additional allowances. However, some of the allowances may not be appropriate for these types of schools since they do not have the same needs for support facilities as a traditional school.

One of the report’s recommendations is to consider developing a new school allowance for alternative education schools. The New School Allowance provided under SFP Regulation 1859.83(c) was created to assist new schools that are phasing in a master planned school to ensure enough funding for a larger, than initially needed, support facilities are built to support the school’s future growth. Furthermore, the new school allowance that is provided to

## DISCUSSION (cont.)

a district is intended to be offset against future construction at that site. The OPSC does not believe that the new school allowance is appropriate for alternative education schools since these schools will not likely be adding new classrooms in the future. This is supported by Information obtained from the analysis of SFP projects, as well as discussions with the Adhoc Committee members that indicated that alternative education schools should have limited number of classrooms at a site. Therefore, based upon this information the OPSC recommends that a “new school allowance” be developed for alternative education schools in lieu of the new school excessive cost hardship grant under Regulation 1859.83(c)

### *Proposed Funding of Support Facilities for Alternative Education Schools*

Attachment A is a copy of the proposed cost and square footage chart, *New Construction Additional Grant for Support Facilities for Alternate Education Schools*, that will be used to determine the square footage necessary for support facilities as well as the cost per square foot for each support facility that is contained in a project. This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage/costs based on the Facility Hardship Chart under Regulation 1859.82(b).

At the April Implementation Committee meeting, the OPSC provided a funding example utilizing the proposed Support Facilities Chart (see Attachment A) in order to solicit feedback to ensure that the funding chart addresses the needs of alternative education schools. The funding example is included on Attachment B, and reflects input received at the previous committee meeting. The example demonstrates the calculation of the support facilities for two different sized schools. The first example illustrates a 6 classroom middle, and the second is a 15 classroom continuation high school.

## PROPOSAL

1. Change the current loading standards to 18 pupils per classroom.
2. Adopt a new method to fund support facilities for both community day and continuation high schools.
3. Amend/adopt regulations.

## RECOMMENDATIONS

1. Amend Regulation Section 1859.1 to include the new loading standards.
2. Amend Regulation Section 1859.83(c).
3. Add Regulation Section 1859.73.3, New Construction Additional Grant for Support Facilities for Alternate Education Schools.
4. Amend Regulation Sections 1859.77.2 and 1859.77.3 to allow Alternative Education Schools to utilize Use of Grants (new construction) requests.

# ATTACHMENT A

## New Construction Additional Grant for Support Facilities for Alternate Education Schools

The allowances in the chart below are based on the High School Pupil allowance for replacement facilities in the Facility Hardship regulations (Section 1859.82). The Multipurpose Facility category has been modified to allow for the option of a gymnasium in lieu of the multipurpose facility; 1,000 square feet from this category has been redirected to create a new category for counseling offices, small group areas and conference rooms; and the minimum square footage is linked to the number of classrooms in the New Construction application.

Add Regulation Section 1859.73.3 as follows:

Facility	Project contains 1 or 2 classrooms	Project contains 3 to 10 classrooms	Project contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	None	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and/or conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

**ATTACHMENT B**  
**FUNDING EXAMPLE**  
**Alternative Education Facilities**  
*( 18 Pupils per Classroom )*

<b>Base Grant Calculations</b>	<b>6 Classrooms Middle School Grant</b>	<b>Total Base Grant</b>	<b>15 Classrooms High School Grant</b>	<b>Total Base Grant</b>
Pupils X Classrooms X Base Grant for Total Base Grant	108	\$667,116	270	\$2,183,220

<b>Cost for Support Facilities</b>	<b>6 Classrooms</b>		<b>15 Classrooms</b>	
	<b>Square Footage</b>	<b>Additional Grants</b>	<b>Square Footage</b>	<b>Additional Grants</b>
Multipurpose or Gymnasium (Includes food service) (\$107 X Sq. Ft.)	4,000	\$428,000	7,200	\$770,400
Toilet (\$195 X Sq. Ft.)	540	\$105,300	1,350	\$263,250
School Administration (\$107 X Sq. Ft.)	800	\$85,600	1,080	\$115,560
Counseling offices, small group areas and/or conference rooms (\$107 X Sq. Ft.)	1,000	\$107,000	1,000	\$107,000
Library/Media Space (\$107 X Sq. Ft.)	1,065	\$113,955	1,761	\$188,427
Classroom Space (1,030 Sq. Ft. X Classrooms)	6,180		15,450	
<b>** Average "Excessive Costs"</b>		\$123,572		\$297,484
<b>*** Average "Site Development Costs"</b>		\$215,232		\$518,145
<b>* 50% TOTALS</b>	<b>13,585</b>	<b>\$1,845,774</b>	<b>27,841</b>	<b>\$4,443,486</b>
<b>* 100% TOTALS</b>	<b>13,585</b>	<b>\$3,691,548</b>	<b>27,841</b>	<b>\$8,886,973</b>

**FOOTNOTES:**

- \* Totals DO NOT include site acquisition costs.
- \*\* Average cost of "Excessive Costs" based upon projects from Proposition 1A and Proposition 47.
- \*\*\* Average cost of "Site Development Costs" based upon projects from Proposition 1A and Proposition 47.

**State Allocation Board  
Implementation Committee  
May 2, 2003**

**LEASE LEASE-BACK AGREEMENTS**

Education Code Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

**OPSC Policy Positions**

Over a period of several years, the OPSC has responded to individual school district questions on issues related to the use of the provisions of EC 17406. These responses have begun to form the office's informal policy on lease lease-back project delivery methods. The responses are summarized below by general topic:

The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.

The lease agreement must contain the following provisions or information:

- The value of the lease.
- A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
- A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.

State bond funds may not be used to make lease or rental payments.

**Outstanding Issues**

Issues continue to surface regarding the use of EC 17406 and the subsequent reimbursement of the lease buy-out costs with State school building funds.

**Exemption from the Public Contracts Code requirements.**

EC section 17406 states in part that a district may enter into a lease lease-back arrangement without advertising for bids. This provision, the avoidance of competitive bid requirements, appears to be one of the major reasons that school districts are turning to the lease lease-back delivery system. (Education Code Section 17425 also states that the article containing EC 17406 prevails over any conflicting provision of law.)

Issue: What other public contract code requirements are avoided by the use of lease lease-back arrangements?

## Outstanding Issues (cont.)

### Compliance with field act and site approval requirements (EC 17402)

Article 2, Section 17402 requires that the district must have an available site which has met criteria pertaining to site selection and approval. It also provides that the plans for the project have been approved under the Field Act.

Issue: When is a site “available”? If a district leases a site with an option to purchase, or has an option to purchase a site, is it available? If so, can the district option a site from the lease lease-back developer?

Issue: Does the requirement that the district “...shall have complied with the provisions of law relating to the selection and approval of sites...” mean that final CDE approval is required prior to entering into the lease lease-back contract?

### Competitive selection of the design professional

Since the plans for the project must be done by the school district prior to entering into the lease lease-back arrangement, it appears that EC section 17070.50 continues to apply. Therefore, notwithstanding EC 17425, the district must be able to certify that the design professional was selected through a competitive process.

### Prevailing wage requirements.

EC section 17424 requires the payment of prevailing wage on lease lease-back projects.

Issue: Are projects done under lease lease-back arrangements subject to the requirements of AB 1506 and required to have a labor compliance program?

### Chargeable Facilities

Education Code Section 17071.75 (b) adds any building provided from any State or local funding source to the existing school building capacity of the district. In other words, the facility is ‘chargeable.’

Issue: When is the facility added to the existing school building capacity? Is the 180 day grace period specified in SAB regulation applicable?

### Eligible Expenditures

Issue: State bond funds may be used for specified expenditures and purposes.

Issue: How will the OPSC ensure that this occurs on a lease lease-back project? In other words, will OPSC require expenditure reports and accounting from the lease lease-back developer?

### Modernization Projects

EC 17400 (b) defines a ‘building’ for which a district may enter into a lease to include remodeling.

Issue: Is modernization a suitable project for lease lease-back arrangements?

## **Outstanding Issues** (cont.)

### Use of EC 17406

The position of the OPSC has been that it is up to the district to determine that the use of the provisions of EC 17406 is 'legal.'

Issue: What constitutes a legitimate lease lease-back arrangement? If the leasee does not finance the project, and the only funding for the construction comes from the district, is there a legitimate lease arrangement?

Issue: If a lease lease-back agreement is found by the courts to be inappropriate, is there a material inaccuracy which may subject the district to the repayment of the apportionment or restriction on future self-certification?

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

(1) One or more buildings located or to be located on one or more sites.

(2) The remodeling of any building located on a site to be leased pursuant to this article.

(3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.

(4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board  
Implementation Committee  
May 2, 2003**

**SAB IMPLEMENTATION COMMITTEE CORRESPONDENCE PROCESS**

BACKGROUND

All correspondence addressed to the Chair receives a response. Additionally, the Office of Public School Construction staff coordinates responses with the Chair when it receives Implementation Committee related correspondence. Correspondence or documents related to specific items are provided to the Committee members with its agenda packets or at the meetings.

In January 2003, the Chair and Committee requested that a more formal process be put in place to address correspondence addressed to the SAB Implementation Committee. As a result, a proposal has been developed for discussion and input from the Committee.

PROPOSAL

To ensure timely coordination and response to Implementation Committee correspondence, the following process is proposed.

- The Executive Assistant to the Committee Chair will be responsible for coordinating the correspondence received.
- The Chair and staff will continue coordinating responses whenever they receive Implementation Committee related correspondence. All correspondence addressed directly to them will receive a response. The Committee members will be copied on those responses. The Executive Assistant to the Committee Chair will maintain an Implementation Committee correspondence log.
- Immediately upon receipt, other Committee members will fax a copy of Committee correspondence to the Chair's Executive Assistant; contact information is as follows:

Portia Jacobson  
Executive Assistant  
Office of Public School Construction  
State Allocation Board  
Phone: (916) 445-3159  
Fax: (916) 324-0623

- The Chair's Executive Assistant will assist in coordinating responses to ensure that all letters receive a reply, as deemed appropriate.
- All others members are encouraged to reply to correspondence addressed directly to them as Implementation Committee members. If the correspondence is duplicated to all Committee members, the members are free to choose the best response method and are responsible for conveying that information to the Chair's Executive Assistant on a timely basis. If a member sends a reply, the Committee members will be copied on those responses. An advance copy will be faxed to the Chair's Executive Assistant.
- Letters, responses and documents will continue to be provided in the Committee agenda packets when associated with the indexed items. If the letters or documentations are received after the agenda is sent out, copies will be provided at the meeting.

RECOMMENDATION

Adopt the proposal as presented.

**STATE ALLOCATION BOARD**

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



**Date:** May 27, 2003

**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 Friday, June 6, 2003 (9:30 am - 3:30 pm) at the State Capitol, Room 447, Sacramento, CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. SAB/OPSC Processes for Lease-Lease Back Projects
3. Continuation High, Community Day and County Community Schools Classroom Loading and Funding Methods
4. Charter Fund Program Review
5. SAB Implementation Committee Correspondence Process

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

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**STATE ALLOCATION BOARD**

1130 K Street, Suite 400

Sacramento, CA 95814

<http://www.dgs.ca.gov/opsc>



**State Allocation Board  
IMPLEMENTATION COMMITTEE  
PENDING ITEMS LIST**

June 6, 2003

**A. FUTURE ITEMS**

- Facilitation of a separate meeting for Overcrowding vs. Growth
- Best Practices

**B. SUSPENDED ITEMS**

- No items at this time

**STATE ALLOCATION BOARD**

1130 K Street, Suite 400  
Sacramento, CA 95814  
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**Implementation Committee  
2003 MEETING CALENDAR****Tuesday, January 7, 2003**

US Bank Plaza  
980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento

**Friday, February 7, 2003**

US Bank Plaza  
980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento

**Friday, March 7, 2003**

US Bank Plaza  
980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento

**Friday, April 4, 2003**

US Bank Plaza  
980 9<sup>th</sup> Street, 2<sup>nd</sup> Floor, Conf. Rm. A, B & C  
Sacramento

**Friday, May 2, 2003**

Department of Education  
1430 N Street, Board Room  
Sacramento

**Friday, June 6, 2003**

State Capitol – Room 447  
Sacramento

**Wednesday, July 2, 2003**

Department of Education  
1430 N Street, Board Room  
Sacramento

**Friday, August 1, 2003**

Department of Education  
1430 N Street, Board Room  
Sacramento

**Friday, September 5, 2003**

Department of Education  
1430 N Street, Board Room  
Sacramento

**Friday, October 3, 2003**

Department of Education  
1430 N Street, Board Room  
Sacramento

**Friday, November 7, 2003**

Sacramento -TBD

**Friday, December 5, 2003**

Department of Education  
1430 N Street, Board Room  
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.

Meeting locations will be forthcoming.

**State Allocation Board  
Implementation Committee  
June 6, 2003**

**LEASE LEASE-BACK AGREEMENTS**

This matter is being presented to the State Allocation Board for two purposes:

- Advise the SAB that projects constructed under lease Lease-back agreements are being recommended for reimbursement and to obtain SAB concurrence that that is a permissible use of state bond funds, and
- Propose amendments to current regulations necessary to clarify requirements for funding particular to lease lease-back arrangements.

**Discussion**

*The Use of Education Code Section 17406 (Lease Lease-Back) as a contracting method.*

Education Code Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

School districts which have used the Lease, Lease-back project delivery method cite the following as reasons for selecting it over the traditional design, bid, build approach:

- Avoid competitive bidding  
Many districts consider the competitive bidding process as required under the Public Contracts Code to be problematic. The process leaves them with little control over the selection of the contractor for the project, and places them in financial jeopardy if the contractor selected is unwilling or unable to perform the construction as planned. The L, L-B process allows the district to select the contractor / developer based on criteria other than cost.
- Guaranteed price  
The district is able to negotiate a fixed price for the lease and, if necessary, the purchase price of the project. Unanticipated costs are the responsibility of the contractor / developer, not the school district.
- Team approach  
Districts have expressed the opinion that L, L-B allows a team approach to the construction of school facilities. The district, developer and contractor all have an interest in a project completed on time and in budget.
- Known contractor  
Contractors can be selected on the basis of their record of success, recommendations from previous clients and financial strength.
- No experienced staff at district  
Many districts do not have experience with large construction projects. The responsibility for co-ordination of the project, obtaining required approvals, and

## Discussion (cont.)

project scheduling become the contractor / developers, who have demonstrated experience in similar school construction projects.

- Value engineering opportunities
- Contractors and subcontractors come from other industries; not the same as usually bid on school projects

Although the law in EC 17406 is clear in allowing districts to proceed on lease lease-back arrangements without competitive bidding, there may be reasons to proceed cautiously when using lease lease-back arrangements. Primary among these is summarized in the Supreme Court majority opinion in *The City of Los Angeles v. Offner* where the following was stated:

*"It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and is actually a sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which and immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void."(underlining added)*

Thus, while the benefits anticipated by districts using lease lease-back may be many, the provisions of EC 17406 may only be used in specific circumstances. It appears to the Office of Public School Construction that some of these circumstances may not truly exist in all lease lease-back contracts.

- The lease lease-back must be entered into in 'good faith'. Presumably that means that both parties to the agreement intend that a lease arrangement will exist and will be implemented.
- The lease arrangement may not be a subterfuge. Many districts openly admit that they are using lease lease-back contracts for the perceived benefits listed earlier.
- The agreement may not create an immediate indebtedness beyond each yearly installment. Some agreements require 'pre-lease' or 'rental' in one form or another which amount to the full cost of the facility. It appears that an immediate indebtedness has been created by the agreement which is being satisfied.
- The District must own the site on which the project will be constructed. Under EC 17402, the district owns the site if it holds title, has an option to purchase, or is acquiring the site through eminent domain. An arrangement whereby the option to purchase the site is with the developing entity could be construed as a subterfuge to avoid EC 17407. That section allows lease lease-back on

## **Discussion** (cont.)

property owned by others, but specifically requires competitive bidding of the agreement.

To date, the OPSC has not taken a position on these potential issues, believing that defense of the use of EC 17406 rests with the district using the process. However, if a lease lease-back agreement is found by the courts to be inappropriate or to have been a subterfuge as defined by the Supreme Court, the agreement is void. If the agreement is voided, then it would appear that funds were released in conflict with the SFP law and that a 'material inaccuracy' occurred. In that case, the SAB will not be able to avoid involvement even though it was not a party to the decision to use a lease lease-back arrangement.

## **OPSC Policy Positions**

Over a period of several years, the OPSC has responded to individual school district questions on issues related to the use of the provisions of EC 17406. These responses have begun to form the office's informal policy on lease lease-back project delivery methods. The responses are summarized below by general topic:

- The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- The lease agreement must contain the following provisions or information:
  - The value of the lease.
  - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
  - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- State bond funds may not be used to make lease or rental payments.

Staff believes that these policies need to be approved by the Board and formalized through the regulatory process.

## **Proposals**

Clarify that lease lease-back agreements meeting the requirements of EC 17406 may be used as a means of constructing or modernizing school facilities otherwise eligible under the SFP. Add regulation section 1859.23 as follows:

*1859.23 SFP Application for Funding of Property Leased Under the Provisions of Education Code Section 17406.*

*In addition to meeting the requirements of Sections 1859.20 and 1859.21 or*

**Proposals** (cont.)

*1859.120, a district may receive SFP funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided the following are met:*

- (a) At the time the funding application is approved by the State Allocation Board, the district has title to the site or meets one of the following:
  - (1) the site acquisition is in final escrow,*
  - (2) the district is leasing the site for a term specified in 1859.22 (b), (1), (2) or (3) and the property lease is not connected to or a part of the lease lease-back agreement created under EC 17406.*
  - (3) the district has filed an action in eminent domain and has received and order of immediate possession of the site.**
- (b) A lease provision that title to the improvements on the site shall vest with the district upon completion of the project.*
- (c) A lease provision that the lease agreement shall terminate within 180 days ~~from the filing of a notice of completion or occupancy of the project by the district, whichever occurs first.~~ Of a funding approval by the Board or occupancy of any portion of the project, whichever is later.*
- (d) The Application for Funding is filed with the Board not later than occupancy by the district of any part of the project.*
- (e) No funds from state bonds are used for lease or rental payments on the project.*

Strike Section 1859.30(i) (5) and substitute the following:

*(5) Where the funding was not approved under this Chapter and the district has not taken occupancy of the classroom.*

## Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project

in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board  
Implementation Committee  
June 6, 2003**

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND  
CONTINUATION HIGH SCHOOL REPORT**

BACKGROUND

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

- Continuation High Schools
- Community Day Schools
- County Community Schools
- County Community Day Schools

FUNDING OF SUPPORT FACILITIES FOR ALTERNATIVE EDUCATION SCHOOLS

One of the report's recommendations is to consider developing a new school allowance for Alternative Education Schools. The OPSC presented at its April and May 2003 Implementation Committee meetings, a copy of the proposed cost and square footage chart, Regulation Section 1859.73.3, *New Construction Additional Grant for Support Facilities for Alternate Education Schools*, that will be used to determine the square footage necessary for support facilities as well as the cost per square foot for each support facility that is contained in a project (see Attachment A). This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage/costs based on the Facility Hardship Chart under Regulation 1859.82(b).

The funding example is included on Attachment B, and reflects input received at the previous committee meeting. The example demonstrates the calculation of the support facilities for two different sized schools. The first example illustrates a 6 classroom middle, and the second is a 15 classroom continuation high school.

In addition, at the May 2003 Implementation Committee meeting, the OPSC provided a funding example utilizing the proposed Support Facilities Chart in order to solicit feedback to ensure that the funding chart addresses the needs of alternative education schools. Input received from the audience and the committee was to consider providing funding for existing Alternative Education Schools that would like to add classrooms in the future which would provide the funding necessary to expand or add to the existing support facilities. Attachment C (forthcoming) provides an example of a two classroom middle school that is adding additional classrooms, which will demonstrate the methodology for calculating the additional New Construction funding for the support facilities based on Regulation 1859.73.3.

PROPOSAL

1. Change the current loading standards to 18 pupils per classroom.
2. Adopt a new method to fund support facilities for both community day and continuation high schools.
3. Amend/adopt regulations.

## RECOMMENDATIONS

1. Amend Regulation Section 1859.2 to include the new loading standards.
2. Amend Regulation Section 1859.83(c).
3. Add Regulation Section 1859.73.3, New Construction Additional Grant for Support Facilities for Alternate Education Schools.
4. Amend Regulation Sections 1859.77.2 and 1859.77.3 to allow Alternative Education Schools to utilize Use of Grants (new construction) requests.

## ATTACHMENT A

Adopt Section 1859.73.3 as follows:

New Construction Additional Grant for Support Facilities for Alternative Education Schools

Authorization for New Construction Additional Grants for Support Facilities for which the final plans and specifications for the project were accepted by the DSA on or before June 26, 2003 may request the following:

(a) If the project is for a new alternative education school on a site with no existing school facilities the district is eligible for a New Construction grant based on the number of classrooms in the project and shall not exceed the following:

	Column 1	Column 2	Column 3
Support Facility	Project contains 1 or 2 classrooms	Project(s) contains 3 to 10 classrooms	Project(s) contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and/or conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

(b) If the project is for additional classroom(s) to an existing Alternative Education School, constructed under the provision of 1859.73.3(a) and the combined number of classrooms exceeds 2 classrooms, the additional support facilities grant provided for this project pursuant to Section (b) shall be calculated as follows:

- (1) Based on the pupils in the project for the additional classrooms, calculate the New Construction additional grant by utilizing Column 2, Section (a) above.
- (2) Subtract the sum of the New Construction additional grant determined in (1) above from the sum of the additional grants received pursuant to 1859.73.3(a).

(c) If the project is for additional classroom(s) to an existing Alternative Education School, constructed under the provision of 1859.73.3(a) and the combined number of classrooms exceeds 10 classrooms, the additional support facilities grant provided for this project pursuant to Section (b) shall be calculated as follows:

- (1) Based on the pupils in the project for the additional classrooms, calculate the New Construction additional grant by utilizing Column 3, Section (a) above.
- (2) Subtract the sum of the New Construction additional grant determined in (1) above from the sum of the additional grants received pursuant to 1859.73.3(a) and (b).

The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Note: Authority cited: Section 17072.17, Education Code and 17071.25, Education Code

Amend Section 1859.83. Excessive Cost Hardship Grant.

(c) Excessive Cost to Construct a New School Project.

With the exception of Alternative Education Schools, if the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

Amend Section 1859.77.3 as follows:

Amend Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
  - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
      2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
  - (2) The existing school site was not constructed under the SFP.
  - (3) The proposed project includes no more than eight classrooms.
  - (4) Grant requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.
  - (5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), with the exception of Alternative Education Schools refer to Section 1859.73.3.
  - (6) The maximum excess pupil amount being requested for this type of Use of Grants request, is calculated by the following:
    - (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b).
    - (B) Multiply the product in (1)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b).
    - (C) Divide the product in (1)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
  - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
      2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
      3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
    - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
      - (A) At the grade level of the proposed project, if available.

- (B) At the lowest grade level other than the proposed project, if available.
- (C) At the next highest grade level other than the proposed project.
- (c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 or 1859.77.3, as appropriate, in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

## Section 1859.2. Definitions.

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

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAAs that will make up the Super HSAA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Alternative Education ” means community day, county community, county community day, and continuation high schools with a loading standard of 18 pupils per classroom.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

“Approved Application(s)” means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 01/03); SAB 50-02, *Existing School Building Capacity*, (Revised 09/02); SAB 50-03, *Eligibility Determination*, (Revised 01/03); and SAB 50-04, *Application for Funding*, (Revised 02/03), as appropriate, and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

“Approved Application for Joint-Use Funding” means a district has submitted an *Application for Joint-Use Funding*, Form SAB 50-07 (Revised 01/03), including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

**ATTACHMENT B**  
**FUNDING EXAMPLE**  
**Alternative Education Facilities**  
*( 18 Pupils per Classroom )*

<b>Base Grant Calculations</b>	<b>6 Classrooms Middle School Grant</b>	<b>Total Base Grant</b>	<b>15 Classrooms High School Grant</b>	<b>Total Base Grant</b>
Pupils X Classrooms X Base Grant for Total Base Grant	108	\$667,116	270	\$2,183,220

	<b>6 Classrooms</b>		<b>15 Classrooms</b>	
<b>Cost for Support Facilities</b>	<b>Square Footage</b>	<b>Additional Grants</b>	<b>Square Footage</b>	<b>Additional Grants</b>
Multipurpose or Gymnasium (Includes food service) (\$107 X Sq. Ft.)	4,000	\$428,000	7,200	\$770,400
Toilet (\$195 X Sq. Ft.)	540	\$105,300	1,350	\$263,250
School Administration (\$107 X Sq. Ft.)	800	\$85,600	1,880	\$201,160
Counseling offices, small group areas and/or conference rooms (\$107 X Sq. Ft.)	1,000	\$107,000	1,000	\$107,000
Library/Media Space (\$107 X Sq. Ft.)	1,065	\$113,955	1,761	\$188,427
Classroom Space (1,030 Sq. Ft. X Classrooms)	6,180		15,450	
<b>** Average "Excessive Costs"</b>		\$123,572		\$304,503
<b>*** Average "Site Development Costs"</b>		\$215,232		\$530,371
<b>* 50% TOTALS</b>	<b>13,585</b>	<b>\$1,845,774</b>	<b>28,641</b>	<b>\$4,548,331</b>
<b>* 100% TOTALS</b>	13,585	\$3,691,548	28,641	\$9,096,663

**FOOTNOTES:**

- \* Totals DO NOT include site acquisition costs.
- \*\* Average cost of "Excessive Costs" based upon projects from Proposition 1A and Proposition 47.
- \*\*\* Average cost of "Site Development Costs" based upon projects from Proposition 1A and Proposition 47.



**State Allocation Board  
Implementation Committee  
June 6, 2003**

**CHARTER SCHOOL FACILITIES PROGRAM DISCUSSION**

**BACKGROUND**

On January 22, 2003, the State Allocation Board (SAB) approved amendments to the School Facility Program (SFP) regulations to incorporate changes brought on by Assembly Bill (AB) 14. AB 14 creates a new pilot program that will allow for \$100 million in Proposition 47 funding for the new construction of facilities for charter schools. This program brings new changes to the SFP. For the first time it allows charter schools to access State facility funding directly or through the school district where the charter school is physically located and allow it to acquire a preliminary apportionment. Another aspect of the program is that the Office of Public School Construction (OPSC) will work with the California School Finance Authority (CSFA) in the approval process of an application.

The SAB and the OPSC's role in the charter school application and approval process will remain essentially the same as it is currently in the SFP. The CSFA will be responsible for determining if a charter school is financially sound and if the local matching share payment will be either lease payments or a cash contribution.

A provision in the law also requires that the OPSC and CSFA provide a joint report to the legislature by July 1, 2003. There are three components to this report:

- *Section One* - Implementation of this article includes a description of the projects funded.
- *Section Two* - Provides a description of this process whereby the board provides funding for charter school facilities.
- *Section Three* - Includes recommendations, if any, regarding statutory changes need to facilitate and streamline the process.

**DISCUSSION**

The OPSC has been collecting data from various correspondence received and meetings that occurred throughout the processing of the program. To further assist the OPSC in reviewing the adequacy of the amendments to the charter school program, we are soliciting comments and recommendations from Committee members and various stakeholders through discussion at this Committee meeting.

**State Allocation Board  
Implementation Committee  
June 6, 2003**

**SAB IMPLEMENTATION COMMITTEE CORRESPONDENCE PROCESS**

BACKGROUND

All correspondence addressed to the Chair receives a response. Additionally, the Office of Public School Construction staff coordinates responses with the Chair when it receives Implementation Committee related correspondence. Correspondence or documents related to specific items are provided to the Committee members with its agenda packets or at the meetings.

In January 2003, the Chair and Committee requested that a more formal process be put in place to address correspondence addressed to the SAB Implementation Committee. As a result, a proposal has been developed for discussion and input from the Committee.

PROPOSAL

To ensure timely coordination and response to Implementation Committee correspondence, the following process is proposed.

- The Executive Assistant to the Committee Chair will be responsible for coordinating the correspondence received.
- The Chair and staff will continue coordinating responses whenever they receive Implementation Committee related correspondence. All correspondence addressed directly to them will receive a response. The Committee members will be copied on those responses. The Executive Assistant to the Committee Chair will maintain an Implementation Committee correspondence log.
- Immediately upon receipt, other Committee members will fax a copy of Committee correspondence to the Chair's Executive Assistant; contact information is as follows:

Portia Jacobson  
Executive Assistant  
Office of Public School Construction  
State Allocation Board  
Phone: (916) 445-3159  
Fax: (916) 324-0623

- The Chair's Executive Assistant will assist in coordinating responses to ensure that all letters receive a reply, as deemed appropriate.
- All others members are encouraged to reply to correspondence addressed directly to them as Implementation Committee members. If the correspondence is duplicated to all Committee members, the members are free to choose the best response method and are responsible for conveying that information to the Chair's Executive Assistant on a timely basis. If a member sends a reply, the Committee members will be copied on those responses. An advance copy will be faxed to the Chair's Executive Assistant.
- Letters, responses and documents will continue to be provided in the Committee agenda packets when associated with the indexed items. If the letters or documentations are received after the agenda is sent out, copies will be provided at the meeting.

RECOMMENDATION

Adopt the proposal as presented.

**STATE ALLOCATION BOARD**

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



**Date:** July 7, 2003

**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 Wednesday, July 9, 2003 (9:30 am - 3:30 pm) at the 1500 Capitol Ave., Room(s) 72.148C and 72.149B, Sacramento, CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. SAB/OPSC Processes for Lease Lease Back Projects/180-Day Reimbursement Issue
3. Continuation High, Community Day and County Community Schools Classroom Loading and Funding Methods
4. Review SB 575 Survey Results (Automatic Fire Detection/Alarm System, Automatic Sprinkler System)

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

**State Allocation Board  
Implementation Committee  
July 9, 2003**

**LEASE LEASE-BACK AGREEMENTS**

This matter is being presented to the State Allocation Board for two purposes:

- Advise the SAB that projects constructed under lease Lease-back agreements are being recommended for reimbursement and to obtain SAB concurrence that that is a permissible use of state bond funds, and
- Propose amendments to current regulations necessary to clarify requirements for funding particular to lease lease-back arrangements.

**Discussion**

*The Use of Education Code Section 17406 (Lease Lease-Back) as a contracting method.*

Education Code Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

School districts which have used the Lease, Lease-back project delivery method cite the following as reasons for selecting it over the traditional design, bid, build approach:

- Avoid competitive bidding  
Many districts consider the competitive bidding process as required under the Public Contracts Code to be problematic. The process leaves them with little control over the selection of the contractor for the project, and places them in financial jeopardy if the contractor selected is unwilling or unable to perform the construction as planned. The L, L-B process allows the district to select the contractor / developer based on criteria other than cost.
- Guaranteed price  
The district is able to negotiate a fixed price for the lease and, if necessary, the purchase price of the project. Unanticipated costs are the responsibility of the contractor / developer, not the school district.
- Team approach  
Districts have expressed the opinion that L, L-B allows a team approach to the construction of school facilities. The district, developer and contractor all have an interest in a project completed on time and in budget.
- Known contractor  
Contractors can be selected on the basis of their record of success, recommendations from previous clients and financial strength.
- No experienced staff at district  
Many districts do not have experience with large construction projects. The responsibility for co-ordination of the project, obtaining required approvals, and

## Discussion (cont.)

project scheduling become the contractor / developers, who have demonstrated experience in similar school construction projects.

- ❑ Value engineering opportunities
- ❑ Contractors and subcontractors come from other industries; not the same as usually bid on school projects

Although the law in EC 17406 is clear in allowing districts to proceed on lease lease-back arrangements without competitive bidding, there may be reasons to proceed cautiously when using lease lease-back arrangements. Primary among these is summarized in the Supreme Court majority opinion in *The City of Los Angeles v. Offner* where the following was stated:

*"It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and is actually a sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which and immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void."(underlining added)*

Thus, while the benefits anticipated by districts using lease lease-back may be many, the provisions of EC 17406 may only be used in specific circumstances. It appears to the Office of Public School Construction that some of these circumstances may not truly exist in all lease lease-back contracts.

- ❑ The lease lease-back must be entered into in 'good faith'. Presumably that means that both parties to the agreement intend that a lease arrangement will exist and will be implemented.
- ❑ The lease arrangement may not be a subterfuge. Many districts openly admit that they are using lease lease-back contracts for the perceived benefits listed earlier.
- ❑ The agreement may not create an immediate indebtedness beyond each yearly installment. Some agreements require 'pre-lease' or 'rental' in one form or another which amount to the full cost of the facility. It appears that an immediate indebtedness has been created by the agreement which is being satisfied.
- ❑ The District must own the site on which the project will be constructed. Under EC 17402, the district owns the site if it holds title, has an option to purchase, or is acquiring the site through eminent domain. An arrangement whereby the option to purchase the site is with the developing entity could be construed as a subterfuge to avoid EC 17407. That section allows lease lease-back on

## **Discussion** (cont.)

property owned by others, but specifically requires competitive bidding of the agreement.

To date, the OPSC has not taken a position on these potential issues, believing that defense of the use of EC 17406 rests with the district using the process. However, if a lease lease-back agreement is found by the courts to be inappropriate or to have been a subterfuge as defined by the Supreme Court, the agreement is void. If the agreement is voided, then it would appear that funds were released in conflict with the SFP law and that a 'material inaccuracy' occurred. In that case, the SAB will not be able to avoid involvement even though it was not a party to the decision to use a lease lease-back arrangement.

## **OPSC Policy Positions**

Over a period of several years, the OPSC has responded to individual school district questions on issues related to the use of the provisions of EC 17406. These responses have begun to form the office's informal policy on lease lease-back project delivery methods. The responses are summarized below by general topic:

- The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- The lease agreement must contain the following provisions or information:
  - The value of the lease.
  - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
  - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- State bond funds may not be used to make lease or rental payments.

Staff believes that these policies need to be approved by the Board and formalized through the regulatory process.

## **Proposals**

Clarify that lease lease-back agreements meeting the requirements of EC 17406 may be used as a means of constructing or modernizing school facilities otherwise eligible under the SFP. Add regulation section 1859.23 as follows:

*1859.23 SFP Application for Funding of Property Leased Under the Provisions of Education Code Section 17406.*

*In addition to meeting the requirements of Sections 1859.20 and 1859.21 or*

**Proposals** (cont.)

*1859.120, a district may receive SFP funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided the following are met:*

- (a) At the time the funding application is approved by the State Allocation Board, the district has title to the site or meets one of the following:
  - (1) the site acquisition is in final escrow,*
  - (2) the district is leasing the site for a term specified in 1859.22 (b), (1), (2) or (3) and the property lease is not connected to or a part of the lease lease-back agreement created under EC 17406.*
  - (3) the district has filed an action in eminent domain and has received and order of immediate possession of the site.**
- (b) A lease provision that title to the improvements on the site shall vest with the district upon completion of the project.*
- (c) A lease provision that the lease agreement shall terminate within 180 days ~~from the filing of a notice of completion or occupancy of the project by the district, whichever occurs first.~~ of a funding approval by the Board or occupancy of any portion of the project, whichever is later.*
- (d) The Application for Funding is filed with the Board not later than occupancy by the district of any part of the project.*
- (e) No funds from state bonds are used for lease or rental payments on the project.*

(Note: Address inconsistency between Section 1859.120(b) and (c); ...vest with the district upon completion of the project, versus 180 days from SAB apportionment or occupancy, whichever is later.)

Strike Section 1859.30(i) (5) and substitute the following:

*(5) Where the funding was not approved under this Chapter and the district has not taken occupancy of the classroom.*

## Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project

in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board  
Implementation Committee  
July 9, 2003**

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND  
CONTINUATION HIGH SCHOOL REPORT**

BACKGROUND

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

- Continuation High Schools
- Community Day Schools
- County Community Schools
- County Community Day Schools

CLASSROOM LOADING FOR ALTERNATIVE EDUCATION SCHOOLS

The report supports and the staff is proposing to change the current loading standards to 18 pupils per classroom for continuation high, community day and county community schools.

FUNDING OF SUPPORT FACILITIES FOR ALTERNATIVE EDUCATION SCHOOLS

One of the report's recommendations is to consider developing a new school allowance for Alternative Education Schools. The OPSC presented at its April and May 2003 Implementation Committee meetings, a chart to illustrate the square footage necessary for support facilities for alternative education facilities (see Attachment A). This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage based on the Facility Hardship Chart under Regulation 1859.82(b).

At the May Committee meeting, the OPSC presented a proposed regulation for a cost allowance based on the square footage chart structured to provide additional funding for support facilities beyond the funds generated from the per pupil grant. Further analysis revealed this proposal provided excessive funding as compared to the SFP Excessive Cost to Construct a New School Project for conventional schools, and is not supported by the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* Report. Under the SFP, the amount of funding provided per pupil includes a portion for support facilities. As the number of classrooms and pupils increase in a project, the amount of funding for support facilities accumulates. The previous alternative education proposal did not account for that accumulation, which caused the excessive funding.

### Revised Proposal for Funding Support Facilities

A revised proposed regulation has been developed (see Attachment B) that utilizes the same methodology as the Excessive Cost to Construct a New School Project for conventional schools. The dollar amounts in the current proposal were derived by utilizing the square footage recommendations from the CDE as illustrated on Attachment A plus accounted for the square footage for the classrooms (1,030 square feet per classroom). (Examples on Attachment C illustrate how the square footage recommendations were the basis of the new school allowance for Alternative Education schools.) The additional funding for each project is calculated by subtracting the base grant amount from the amount shown in the Alternative Education chart on Attachment B.

### Additional Projects

The revised proposal permits additional funding as the district files additional applications for the same site with an offset provision to account for previous funding received for support facilities. An example is shown on Attachment D.

### Grandfathering Provision

The proposal includes a grandfathering provision for those projects for which the final plans and specifications for the project were accepted by the DSA on or after July 23, 2003. This date may change and is anticipated to be the date that the SAB approves this proposal.

### Existing Alternative Education Schools Built Outside These Proposed Regulations

The proposal includes similar provisions available to other districts that want to build support facilities for its existing schools. The proposal includes revisions to the Use of New Construction Grants regulations (see Attachment B) to accommodate the following Alternative Education support facilities:

- Multipurpose or Gymnasium
- Library
- Counseling Offices and/or Conference Rooms

### Proposal Reflects 2003 Amounts

The amounts shown in this Committee item reflect the current 2003 costs to enable relevant discussion of this proposal. When this item is presented before the SAB, the dollar amounts shown in the chart, which will appear in the SFP Regulations, will reflect 1998 costs to coincide with the origination of the SFP. The accumulative cost indices will be applied to the dollar amounts in the chart, and eligible districts' approvals will be based on the current costs.

## RECOMMENDATIONS

1. Amend Regulation Section 1859.2 to include the new loading standards.
2. Amend Regulation Section 1859.83(c).
3. Add Regulation Section 1859.83(c)(2) Excessive Cost to Construct a New Alternative Education School.
4. Amend Regulation Section 1859.77.3 to allow Alternative Education Schools to utilize Use of Grants (new construction) requests.

## ATTACHMENT A

	Column 1	Column 2	Column 3
Support Facility	Project contains 1 or 2 classrooms	Project(s) contains 3 to 10 classrooms	Project(s) contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and/or conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

## ATTACHMENT B

Amend Section 1859.2. Definitions.

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

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAs that will make up the Super HSA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Alternative Education ” means community day, county community, county community day, and continuation high schools with a loading standard of 18 pupils per classroom.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

...

Amend Section 1859.83. Excessive Cost Hardship Grant.

(c) Excessive Cost to Construct a New School Project.

(1) With the exception of Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after July 23, 2003, if the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

(2) Excessive Cost Hardship Grants for Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after July 23, 2003 may be requested as follows:

(A) If the project is for an Alternative Education school on a site with no existing school facilities, the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

<u>No. of Classrooms</u>	<u>Alternative Education School</u>
<u>1</u>	<u>\$487,830</u>
<u>2</u>	<u>\$591,860</u>
<u>3</u>	<u>\$1,012,323</u>
<u>4</u>	<u>\$1,130,190</u>
<u>5</u>	<u>\$1,251,087</u>
<u>6</u>	<u>\$1,372,085</u>
<u>7</u>	<u>\$1,492,982</u>

<u>No. of Classrooms</u>	<u>Alternative Education School</u>
<u>15</u>	<u>\$2,892,741</u>
<u>16</u>	<u>\$3,021,011</u>
<u>17</u>	<u>\$3,149,180</u>
<u>18</u>	<u>\$3,277,450</u>
<u>19</u>	<u>\$3,405,619</u>
<u>20</u>	<u>\$3,533,788</u>
<u>21</u>	<u>\$3,662,058</u>

<u>8</u>	<u>\$1,613,980</u>
<u>9</u>	<u>\$1,734,877</u>
<u>10</u>	<u>\$1,855,774</u>
<u>11</u>	<u>\$2,379,964</u>
<u>12</u>	<u>\$2,508,133</u>
<u>13</u>	<u>2,636,403</u>
<u>14</u>	<u>\$2,764,572</u>

<u>22</u>	<u>\$3,790,227</u>
<u>23</u>	<u>\$3,918,497</u>
<u>24</u>	<u>\$4,046,666</u>
<u>25</u>	<u>\$4,174,835</u>
<u>26</u>	<u>\$4,303,105</u>
<u>27</u>	<u>\$4,431,274</u>

The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

(B) If the project is for additional classroom(s) to an existing Alternative Education school, constructed under the provision of 1859.83(c)(2), the district is eligible for a New Construction Excessive Cost Hardship Grant calculated as follows:

1. Determine the amount as shown in the chart above in Section 1859.83(c)(2)(A) for the total combined number of classrooms in the current project and for all previous projects at the same site. In the first occurrence when the total number of classrooms exceed 27, the amount shown for 27 classrooms shall be used.
2. Subtract the amount as shown in the chart above in Section 1859.83(c)(2)(A) for the sum of the number of classrooms for all previous projects at the same site (exclude the classrooms in the current project).
3. Subtract the New Construction Grant for the current project.

Amend Section 1859.77.3 as follows:

Amend Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library, or for an Alternative Education school to construct a multipurpose/gymnasium, library, counseling offices, and/or conference rooms, at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
  - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
  - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
    1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
    2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
- (2) The existing school site was not constructed under the SFP.

- (3) The proposed project includes no more than eight classrooms.
- (4) Grant requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.
- (5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), with the exception for Alternative Education schools refer to the following:

<u>Support Facility</u>	<u>Existing Site Plus Proposed Project Contain 1 or 2 Classrooms</u>	<u>Existing Site Plus Proposed Project Contain 3 to 10 Classrooms *</u>	<u>Existing Site Plus Proposed Project Contain 11 or More Classrooms*</u>
<u>Multipurpose Facility or Gymnasium (includes food service)</u>	<u>2,500 sq. ft.</u>	<u>6.3 sq. ft. per pupil minimum 4,000 sq. ft.</u>	<u>6.3 sq. ft. per pupil minimum 7,200 sq. ft., maximum of 18,000 sq. ft.</u>
<u>Counseling Offices, and/or Conference Rooms</u>	<u>1,000 sq. ft. Combined Total</u>	<u>1,000 sq. ft.</u>	<u>1,000 sq. ft.</u>
<u>Library/Media Space</u>		<u>4.3 sq. ft. per pupil plus 600 sq. ft.</u>	<u>4.3 sq. ft. per pupil plus 600 sq. ft.</u>

\* The proposed project cannot include more than eight classrooms.

- (6) The maximum excess pupil amount being requested for this type of Use of Grants request, is calculated by the following:
- (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b), with the exception for Alternative Education schools refer to subsection (5) above.
  - (B) Multiply the product in (6)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b), utilizing the same per square foot grant amount for the Alternative Education school facilities listed in subsection (5) above.
  - (C) Divide the product in (6)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
- (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
  - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
    1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
    2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
    3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
  - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
    - (A) At the grade level of the proposed project, if available.
    - (B) At the lowest grade level other than the proposed project, if available.
    - (C) At the next highest grade level other than the proposed project.
  - (c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 or 1859.77.3, as appropriate, in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

## ATTACHMENT C

Examples How Attachment A Square Footage Recommendations are the Basis of the  
New School Allowance for Alternative Education Schools

### Square Footage Calculations

No. Class-rooms	Pupils		Facility Square Footage (1,030 x No. Crs)	Multi-purpose`	Toilet	Admin	Office/Conf etc.	Library	Total Square Footage *
	Minimum	Maximum							
2	19	36	2,060	2,500	300	1,000	-	0	5,860
6	91	108	6,180	4,000	540	800	1,000	1,065	13,585
15	253	270	15,450	7,200	1,350	1,880	1,000	1,761	28,641

\* Provides benefit of maximum number of pupils per classroom in each square footage category.

### New School Allowance for an Initial Alternate Education School Application

No. Class-rooms	Pupils		Facility Square Footage	Multiplied by \$101/ sq.ft.**	New School Allowance	\$ Per Pupil	Base Grant \$	New School Grant \$	Combined Total
	Minimum	Maximum							
2	19	36	5,860	101	\$ 591,860	\$ 16,441	\$ 291,096	\$ 300,764	\$ 591,860
6	91	108	3,585	101	\$ 1,372,085	\$ 12,704	\$ 873,288	\$ 498,797	\$1,372,085
15	253	270	28,641	101	\$ 2,892,741	\$ 10,714	\$ 2,183,220	\$ 709,521	\$ 2,892,741

\*\* The SFP high school grant of \$8,086 divided by an average of 80 square foot per pupil.

## ATTACHMENT D

### New Alternative Education School Offset Example

**INITIAL FUNDING - New Alternative Education School 2 classrooms, 36 pupil High School**

	<i>New Proposal</i>
	<i>Amounts</i>
Base Grant	\$ 291,096
New School Grant	\$ 300,764
<b>Total</b>	<b>\$ 591,860 *</b>

**SUBSEQUENT FUNDING REQUEST - 3 Additional Classroom Request (54 Pupils)**

	<i>New Proposal</i>
	<i>Amounts</i>
New School Amount for Total CR's	\$ 1,251,087
Offset New School Amount for All Previous CR's	\$ ( 591,860)
Subtract Current Project's Base Grant	\$ (436,644)
New School Grant Funding for this Project	\$ 222,583
Base Grant and New School Funding for this Project*	\$ 659,227 *

**SUBSEQUENT FUNDING REQUEST - 4 Additional Classroom Request (72 Pupils)**

	<i>New Proposal</i>
	<i>Amounts</i>
New School Amount for Total CR's	\$ 1,734,877
Offset New School Amount for All Previous CR's	\$ (1,251,087)
Subtract Current Project's Base Grant	\$ (582,192)
New School Grant Funding for this Project	\$ (98,402)
Base Grant and New School Funding for this Project*	\$ 483,790 *

\* **IMPORTANT NOTE:** In addition to the amount shown, each project can access all excessive costs and additional grants for which it would otherwise be eligible, (i.e., small school, geographic, urban, multistory, project assistance, site development, site acquisition, etc.).

**State Allocation Board  
Implementation Committee  
July 9, 2003**

**SENATE BILL 575 SURVEY  
Automatic Fire Detection /Alarm  
and Automatic Sprinkler Requirement**

**BACKGROUND**

Senate Bill (SB) 575, Chapter 725, Statutes of 2001 requires all school district plans for new construction and modernization submitted to the Division of the State Architect (DSA) and requesting funding under the School Facility Program on or after July 1, 2002 to include automated fire detection, alarm, and in certain types of construction, a sprinkler system. In addition, this law required the State Allocation Board (SAB) to modify the existing grants for new construction and modernization to cover the costs associated with the purchase and installation of an automatic fire detection alarm and/or sprinkler system. The SAB adopted regulations in June 2002 to include an increase to the per pupil grants for these costs.

A provision in SB 575 requires the SAB to review the adequacy of the per pupil grant adjustments and determine if these adjustments are sufficient. The SAB is required to perform this review prior to July 1, 2003.

**INITIAL GRANT CREATION**

Since SB 575 required the SAB to adjust the per pupil grant amounts for new construction and modernization to cover the increased costs of installing these systems, the Office of Public School Construction (OPSC) was faced with the difficult task of locating resources that could assist in creating the grant adjustments. The OPSC solicited data at two SAB Implementation Committee meetings for this purpose and contacted the DSA and the Office of the State Fire Marshall (OSFM) to request information and resources. The OSFM and the DSA provided the OPSC with several sources which enabled access to the data needed. The OPSC utilized these sources to create the initial per pupil grant for new construction and modernization.

A factor that influenced the decision to create the per pupil grants with limited information was the timeline for the implementation of this law. The California Building Standards Commission adopted the OSFM's regulations on an emergency basis; therefore, the regulations would require the DSA and the SAB to implement SB 575 on July 1, 2002.

**SUMMARY OF SURVEY RESULTS**

To assist the OPSC in conducting a meaningful review of the adequacy of the per pupil grants, the OPSC mailed a survey to all districts that received funding under these new fire code provisions. A total of nearly 100 surveys were sent out with 49 responses received (20 new construction and 29 modernization projects). Included with the survey the districts submitted either a detailed cost breakdown, such as a contractor bid, or schedule of values. The districts that responded to the survey represent northern, central, and southern areas of California, as well as suburban, urban and rural.

SUMMARY OF SURVEY RESULTS (cont.)

Today we are discussing the results of the survey, and our recommendations which are outlined in the below chart:

New Construction (Additions to an existing site):

<i>Description</i>	<i>Current Per Pupil Grant * @ 50% State Share</i>	<i>Per Pupil Grant Based on Survey @ 50% State Share</i>	<i>Recommended Per Pupil Grant** @50% State Share</i>
Alarm/Detection – Elementary	\$30.00	\$6.35	\$7.00
Alarm/Detection – Middle	\$39.00	\$9.75	\$10.00
Alarm/Detection – High	\$29.00	\$16.50	\$17.00

New Construction (New School / New Campus):

<i>Description</i>		<i>Current Per Pupil Grant * @ 50% State Share</i>		<i>Per Pupil Grant Based on Survey @ 50% State Share</i>		<i>Recommended Per Pupil Grant** @50% State Share</i>	
		<i>Grant \$</i>	<i>Combined Total</i>	<i>Grant \$</i>	<i>Combined Total</i>	<i>Grant \$</i>	<i>Combined Total</i>
<i>Elementary</i>	Alarm/Detection	\$30.00	\$124.00	\$6.35	\$111.08	\$7.00	\$112.00
	Sprinkler	\$94.00		\$104.73		\$105.00	
<i>Middle</i>	Alarm/Detection	\$39.00	\$151.00	\$9.75	\$132.58	\$10.00	\$135.00
	Sprinkler	\$112.00		\$122.83		\$125.00	
<i>High School</i>	Alarm/Detection	\$29.00	\$156.00	\$16.50	\$146.50	\$17.00	\$147.00
	Sprinkler	\$127.00		\$130.00		\$130.00	

Modernization:

<i>Description</i>	<i>Current Per Pupil Grant * @ 80% State Share</i>	<i>Per Pupil Grant Based on Survey @ 80% State Share</i>	<i>Recommended Per Pupil Grant** @80% State Share</i>
Alarm/Detection – Elementary	\$118.00	\$76.68	\$77.00
Alarm/Detection – Middle	\$146.00	\$76.72	\$77.00
Alarm/Detection – High	\$143.00	\$72.80	\$77.00

\* This per pupil grant amount is representative of the current grant amount based on the January 1, 2003 Index.

\*\* These per pupil grant amounts will be shown in regulations at the 1998 index amount to coincide with other grants provided in the regulations.

## SUMMARY OF SURVEY RESULTS (cont.)

The survey results show that some costs were under-funded and others were over-funded. As a result, the OPSC is recommending that the per pupil grant amounts be adjusted accordingly to reflect the actual costs. The initial per pupil grant developed for new construction projects that contain or require automatic sprinkler systems is inadequate; therefore, the OPSC is recommending that these costs be increased to reflect the actual costs. The initial new construction and modernization per pupil amount for fire alarm/detection is excessive, and the OPSC is recommending that the per pupil grant be reduced. The average for the actual project costs from the survey results is the basis of our recommended amounts.

### *Special Day Class Pupils*

The initial per pupil grant adjustments for SDC pupils was created by increasing the SDC grants proportionately from the base grant to the SDC base grant. The survey results did not delineate whether the project contained SDC pupils; therefore, the OPSC has no data to support if the grants are sufficient or not. However, we recommend adjustment of the SDC per pupil grants accordingly to be consistent with the recommended amounts in this item.

## RECOMMENDATIONS

1. Adjust the current per pupil new construction and modernization grants for fire alarm/detection system based upon the based upon the recommended per pupil grant amount indicated in the chart above.
2. Adjust the current per pupil new construction grant for automatic fire alarm and sprinkler system recommended per pupil grant amount indicated the chart above.
3. Adjust the Special Day Class per pupil grants based upon the adjustment to the new construction and modernization grants recommended above.

**STATE ALLOCATION BOARD**

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



**Date:** July 21, 2003

**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 Friday, August 1, 2003 (9:30 am - 3:30 pm) at the 1500 Capitol Ave., Room(s) 72.151A and 72.149B, Sacramento, CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Continuation High, Community Day and County Community Schools Classroom Loading and Funding Methods
3. Amendments to Regulations for Automatic Fire Detection/Alarm System, and Automatic Sprinkler System (SB 575)
4. SAB/OPSC Processes for Lease Lease-Back Projects and Proposed Regulations
5. District Funded Facilities Included in Existing School Building Capacity (180-Day Reimbursement Issue)
6. Bond Accountability

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
August 1, 2003

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND  
CONTINUATION HIGH SCHOOL REPORT**

**BACKGROUND**

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

- Continuation High Schools
- Community Day Schools
- County Community Schools
- County Community Day Schools

**CLASSROOM LOADING FOR ALTERNATIVE EDUCATION SCHOOLS**

The report supports and the staff is proposing to change the current loading standards to 18 pupils per classroom for continuation high, community day and county community schools.

**FUNDING OF SUPPORT FACILITIES FOR ALTERNATIVE EDUCATION SCHOOLS**

One of the report's recommendations is to consider developing a new school allowance for Alternative Education Schools. The OPSC presented at its April and May 2003 Implementation Committee meetings, a chart to illustrate the square footage necessary for support facilities for alternative education facilities (see Attachment A). This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage based on the Facility Hardship Chart under Regulation 1859.82(b).

At the May Committee meeting, the OPSC presented a proposed regulation for a cost allowance based on the square footage chart structured to provide additional funding for support facilities beyond the funds generated from the per pupil grant. Further analysis revealed this proposal provided excessive funding as compared to the School Facility Program (SFP) Excessive Cost to Construct a New School Project for conventional schools, and is not supported by the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* Report. Under the SFP, the amount of funding provided per pupil includes a portion for support facilities. As the number of classrooms and pupils increase in a project, the amount of funding for support facilities accumulates. The previous alternative education proposal did not account for that accumulation, which caused the excessive funding.

**Revised Proposal for Funding Support Facilities**

A revised proposed regulation has been developed (see Attachment B) that utilizes the same methodology as the Excessive Cost to Construct a New School Project for conventional schools. The dollar amounts in the current proposal were derived by utilizing the square footage recommendations from the CDE as illustrated on Attachment A, plus accounted for the square footage for the classrooms (1,030 square feet per classroom). (Examples on Attachment C illustrate how the square footage recommendations were the basis of the new school allowance for Alternative Education schools.)

The additional funding for each project is calculated by subtracting the base grant amount from the amount shown in the Alternative Education chart on Attachment B.

### Additional Projects

The revised proposal permits additional funding as the district files additional applications for the same site with an offset provision to account for previous funding received for support facilities. An example is shown on Attachment E.

### Grandfathering Provision

The proposal includes a grandfathering provision for those projects for which the final plans and specifications for the project were accepted by the Department of State Architect on or after August 27, 2003. This date may change and is anticipated to be the date that the State Allocation Board approves this proposal.

### Existing Alternative Education Schools Built Outside These Proposed Regulations

The proposal includes similar provisions available to other districts that want to build support facilities for its existing schools. The proposal includes revisions to the Use of New Construction Grants regulations (see Attachment B) to accommodate the following Alternative Education support facilities:

- Multipurpose or Gymnasium
- Library
- Counseling Offices and/or Conference Rooms

### Proposal Reflects both 1998 and 2003 Amounts

The amounts shown in the proposed SFP Regulation item (see Attachment B) reflect the 1998 costs to coincide with the origination of the SFP. However, a chart with the 2003 grant amounts reflecting the accumulative cost indices has been included (see Attachment D) to enable relevant discussion of this proposal. Eligible districts' approvals will be based on the current costs.

### RECOMMENDATIONS

1. Amend Regulation Sections as provided on Attachment B.
2. Add Regulation Section 1859.83(c)(2) Excessive Cost to Construct a New Alternative Education School.
3. Amend Forms SAB 50-02, 50-03 and 50-04.

## ATTACHMENT A

### MINIMUM ESSENTIAL FACILITIES FOR ALTERNATIVE EDUCATION SCHOOLS

	Column 1	Column 2	Column 3
Support Facility	Project contains 1 or 2 classrooms	Project(s) contains 3 to 10 classrooms	Project(s) contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and/or conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

## ATTACHMENT B

### Amend Section 1859.2. Definitions.

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

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAs that will make up the Super HSA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Alternative Education ” means community day, county community, county community day, and continuation high schools with a loading standard of 18 pupils per classroom.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

...

“General Education” means non-Alternative Education and non-Special Day Class for grades K-6, 7-8, and 9-12.

...

### Amend Section 1859.33. Classroom Identification and Determination of Existing School Building Capacity.

The district shall identify by grade level, based on its most typical use for General Education grades K-6, 7-8 or 9-12; Alternative Education grades K-6, 7-8, or 9-12; or non-severe or severe Special Day Class education, each classroom included in the classroom inventory determined pursuant to Section 1859.31 and not excluded pursuant to Section 1859.32. These classrooms shall be reported on the Form SAB 50-02.

### Amend Section 1859.35. Calculation of Existing School Building Capacity.

The district’s existing school building capacity shall be determined by totaling the amount calculated in (a) with the amount determined in (b) or (c), whichever is the greater:

- (a) With the exception of classrooms for Special Day Class pupils and Alternative Education pupils for which the multiplier is indicated on the Form SAB 50-02, multiply the number of available classrooms in the district, the HSA or the Super HSA by the following: 25 for each K-6 classroom and 27 for each 7-12 classroom. Available classrooms shall be determined by the reduction of classrooms identified in Section 1859.32 from the gross classroom inventory prepared pursuant to Section 1859.31 and the inclusion of portable classrooms as provided pursuant to Education Code Section 17071.30 (a) or (b).
- (b) Multiply the K-6 pupil capacity of the elementary district, the unified district, the HSA or the Super HSA in a unified district as determined by the results of the calculations in (a) at the time of the initial determination of eligibility by six percent. When the elementary or unified district meets the Substantial Enrollment Requirement (SER) or qualifies for a waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7(c), the amount reported in (b) shall be zero. For High School Districts, the amount reported in (b) shall be zero.
- (c) A number equal to the number of pupils provided operational grants as indicated in the current report of operational grants made by the CDE pursuant to Education Code Section 42268, less the number of pupils at a school on the MTYRE calendar that has a density of at least 200 or more pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.

Amend 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 1859.160.
- (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.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82 (a).
- (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:
  - (1) That is a trailer and transportable/towed on its own wheels and axles.
  - (2) Of less than 700 interior square feet.
  - (3) Excluded pursuant to Education Code Section 17071.30.
  - (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
  - (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
  - (6) 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.
  - (7) That was acquired with joint-use funds specifically available for that purpose.
- (j) For small school districts, decreased:
  - (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
  - (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
- (k) Adjusted for any change in classroom inventory as a result of a reorganization election.
- (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.166.
- (o) For classroom loading standards adopted by the Board for Alternative Education individuals.
- (p) Adjusted for operational grant changes as determined/provided by the California Department of Education.

Section 1859.61. Adjustments to the Modernization Baseline Eligibility.

The baseline eligibility for modernization as provided in Section 1859.60 for a specific site will be adjusted as follows:

- (a) Reduced by the number of pupils provided grants in a modernization SFP project at the specific site.
- (b) Reduced by the number of pupils housed, based on the loading standards pursuant to Education Code Section 17071.25(a)(2), in a modernization LPP project funded under the LPP pursuant to Sections 1859.14 and 1859.15.
- (c) Increased by changes in projected enrollment in subsequent enrollment reporting years.
- (d) Increased for additional facilities not previously modernized with State funds, that become 25 years old, if permanent, or 20 years old, if portable or as a result of audit findings made pursuant to Sections and 1859.90 1859.105.
- (e) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (f) Adjusted as a result of amendments to these Subgroup 5.5 Regulations that affect the eligibility.
- (g) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (h) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (i) For classroom loading standards adopted by the Board for the Alternative Education individuals.

Amend Section 1859.73.2. New Construction Additional Grant for Replaced Facilities.

- (a) In addition to any other funding authorized by these Regulations, the Board shall provide funding for the amount(s) in (b) below for the replacement cost of one-story buildings that are demolished at a school in order to increase pupil capacity of that school if all the following conditions are met:
  - (1) The school must be on MTYRE at the time the Approved Application is accepted.
  - (2) The site size as determined by the CDE for the existing capacity of the school is less than 75 percent of the recommended CDE site size.
  - (3) The pupil capacity of the school must be increased by at least the greater of (A) or (B) below:
    - (A) Twenty percent of the existing pupil capacity (before replacement) of the school. Existing pupil capacity shall be determined by multiplying classrooms intended for General Education grades ~~k~~Kindergarten through six by 25, classrooms intended for General Education grades seven through 12 by 27, Alternative Education grades Kindergarten through 12 by 18, classrooms intended for Non-Severely Disabled Individuals with Exceptional Needs by 13 and classrooms intended for Severely Disabled Individuals with Exceptional Needs by nine. Classrooms shall not include any classrooms reduced from the Gross Classroom Inventory pursuant to Section 1859.32.
    - (B) 200 pupils.
  - (4) The sum of (A) and (B) below is less than the amount determined in (E) below:
    - (A) Determine the estimated cost of demolition of the one-story buildings to be replaced. The cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Cost Publication.
    - (B) Multiply the square footage of the buildings to be replaced by the Current Replacement Cost.
    - (C) Multiply the New Construction Grants requested in box 2a. of the Form SAB 50-04 by .01775 for K-6, .021 for 7-8 and .02472 for 9-12. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-04 as either K-6, 7-8 or 9-12 based on the type of project selected by the district on Form SAB 50-04.
    - (D) Determine the average appraised value of land per acre, including relocation costs, within the attendance boundaries of the school. The appraisal must be consistent with Section 1859.74.1.
    - (E) Multiply the sums of the products determined in (C) above by the average appraised value of land per acre determined in (D) above.
- (5) The CDE has determined that the replacement of the one-story buildings on the existing site with multilevel building(s) would be the best available alternative and will not create a school with an inappropriate number of pupils in relation to the size of the site.
- (6) The one-story buildings to be replaced on the existing site may not be leased facilities.
- (7) With the exception of portables acquired with Class Size Reduction funds, the one-story buildings to be replaced on the site may not have been funded for either new construction or modernization funds from Proposition 1A funds within the past five years from the date the Approved Application is accepted.
- (b) If the criteria in (a) are met, the additional funding is determined by multiplying \$173.30 per square foot for Toilet Facilities and by \$96.30 per square foot for all other facilities included in the one-story buildings to be replaced adjusted for the following:
  - (1) The amounts shall be adjusted annually in the manner prescribed in Section 1859.71.
  - (2) The amounts shall be increased by the percentage authorized in Section 1859.73 if the replacement area will be multilevel building(s).

The district is eligible for site development in accordance with Section 1859.76 including the demolition of the replacement structures as part of the SFP project.

Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library, or for an Alternative Education school to construct a multipurpose/gymnasium, library, counseling offices, and/or conference rooms, at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
  - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
  - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
    - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
    - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
  - (2) The existing school site was not constructed under the SFP.
  - (3) The proposed project includes no more than eight classrooms.
  - (4) Grants requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.
  - (5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), with the exception of Alternative Education schools refer to the following:

<u>Support Facility</u>	<u>Existing Site Plus Proposed Project Contain 1 or 2 Classrooms</u>	<u>Existing Site Plus Proposed Project Contain 3 to 10 Classrooms *</u>	<u>Existing Site Plus Proposed Project Contain 11 or More Classrooms*</u>
<u>Multipurpose Facility or Gymnasium (includes food service)</u>	<u>2,500 sq. ft.</u>	<u>6.3 sq. ft. per pupil minimum 4,000 sq. ft.</u>	<u>6.3 sq. ft. per pupil minimum 7,200 sq. ft., maximum of 18, 000 sq. ft.</u>
<u>Counseling Offices, and/or Conference Rooms</u>	<u>1,000 sq. ft. Combined Total</u>	<u>1,000 sq. ft.</u>	<u>1,000 sq. ft.</u>
<u>Library/Media Space</u>		<u>4.3 sq. ft. per pupil plus 600 sq. ft.</u>	<u>4.3 sq. ft. per pupil plus 600 sq. ft.</u>

\*The proposed project cannot include more than eight classrooms.

- (6) The maximum excess pupil amount being requested for this type of use of grants request, is calculated by the following:
- (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b), with the exception of Alternative Education schools refer to subsection (5) above.
  - (B) Multiply the product in (a)(6)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b); utilize the same per square foot grant amount for the Alternative Education school facilities.
  - (C) Divide the product in (a)(6)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
- (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that include the following:
    - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
    - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
    - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
      - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
      - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
      - 3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
  - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
    - (A) At the grade level of the proposed project, if available.
    - (B) At the lowest grade level other than the proposed project, if available.
    - (C) At the next highest grade level other than the proposed project.
    - (c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 or 1859.77.3, as appropriate, in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its use of grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

#### Section 1859.82. Facility Hardship.

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for:

- (a) New classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if either (1) or (2) are met:
  - (1) The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the

close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the Division of the State Architect to be repaired, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk.

If the request is for replacement facilities, a cost/benefit analysis must be prepared by the district and submitted to the OPSC that indicates the total costs to remain in the classroom or related facility and mitigate the problem is at least 50 percent of the Current Replacement Cost of the classroom or related facility. The cost/benefit analysis may include applicable site development costs as outlined in Section 1859.76. If the cost to remain in the classroom or related facility is less than 50 percent of the Current Replacement Cost, the district may qualify for a Modernization Excessive Cost Hardship Grant for rehabilitation costs pursuant to Section 1859.83 (e).

If the request is for replacement facilities that included structural deficiencies, the cost/benefit analysis must also include a report from a licensed design professional identifying the minimum work necessary to obtain Division of the State Architect approval. The report must contain a detailed cost estimate of the repairs. The report and cost estimate shall be subject to review by the OPSC for conformance with the Saylor Current Construction Cost Publication and, at the OPSC's discretion, the Division of the State Architect.

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

If the district qualifies for a new or replacement school pursuant to either (1) or (2) above, the district is eligible for a New Construction Grant as a new construction project for the lesser of the pupils housed in the replaced facility based on loading standards pursuant to Education Code Section 17071.25(a)(2) or the latest CBEDS enrollment at the site.

If the district qualifies for replacement facilities on the same site pursuant to either (1) or (2) above, the district is eligible for funding as a new construction project. Replacement facilities shall be allowed in accordance with the square footage amounts provided in the chart in Section (b) below. If the facility eligible for replacement is not shown in the chart in Section (b) below, the replacement facility shall be limited to the square footage replaced. The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. Additional funding may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a), (b) or (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to either (1) or (2) above will be reduced for any space deemed available by the Board in the district, the HSAA or Super HSAA that could be used to house some or all of the displaced pupils, fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

- (b) A multi-purpose room, toilet, gymnasium, school administration or library/media center, facility that meets all the following:
  - (1) The facility was lost or destroyed as a result of a disaster, including but not limited to fire, flood or earthquake.
  - (2) The facility is no longer useable for school purposes as recommended by the California Department of Education and approved by the Board.
  - (3) The district has demonstrated satisfactorily to the Board that the facility was uninsurable or the cost of insurance was prohibitive.

If the district qualifies, the district is eligible for funding as a new construction project. The funding amount provided shall be \$96.30 per square foot for library/media center, school administration, gymnasium and multi-purpose facilities, and/or \$173.30 per square foot for Toilet Facilities. A New Construction Additional Grant may be provided for applicable site development costs pursuant to Section 1859.76, New Construction Excessive Cost Hardship Grant(s) pursuant to Section 1859.83(a) and (d), therapy room pursuant to Section 1859.72, multilevel construction pursuant to Section 1859.73 and project assistance pursuant to Section 1859.73.1. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Any grants provided pursuant to (b) above, shall be reduced by fifty percent of any insurance proceeds collectable by the district for the displaced facilities and fifty percent of the net proceeds available from the disposition of any displaced facilities.

The square footage provided, after accounting for all useable facilities on the site, shall not exceed the following:

<i>Facility</i>	<i>Elementary School Pupils</i>	<i>Middle School Pupils</i>	<i>High School Pupils</i>
Multi-Purpose (includes food service)	5.3 sq. ft. per pupil minimum 4,000 sq. ft.	5.3 sq. ft. per pupil minimum 5,000 sq. ft.	6.3 sq. ft. per pupil minimum 8,200 sq. ft.
Toilet	3 sq. ft. per pupil minimum 300 sq. ft.	4 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
Gymnasium (includes shower/locker)	N/A	12.9 sq. ft. per pupil minimum 6,828 sq. ft. maximum 16,000 sq. ft.	15.3 sq. ft. per pupil minimum 8,380 sq. ft. maximum 18,000 sq. ft.
School Administration	3 sq. ft. per pupil minimum 600 sq. ft.	3 sq. ft. per pupil minimum 600 sq. ft.	4 sq. ft. per pupil minimum 800 sq. ft.
Library/Media Center	2.3 sq. ft. per pupil plus 600 sq. ft.	3.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

Any facilities eligible for facility hardship not shown in the above chart or for Alternative Education facilities not provided in Section 1859.77.3(A)(5) shall be eligible for replacement square footage equal to the facilities replaced. For an Alternative Education school eligible for a facility hardship, utilize the square footage provided in Section 1859.77.3(A)(5), with the exception of toilet and administration where the chart above shall be utilized.

A district may request a determination of eligibility for facility hardship funding in advance of project funding.

- (c) A district seeking replaced facilities as a result of either (a) or (b) above must submit Form SAB 50-04 for the replaced facilities:
  - (1) Within 18 months if the replacement facilities will be located on the same site.
  - (2) Within 24 months if the replacement facilities will be located on a replacement site.

If an Approved Application for the replaced facility is not accepted within the time periods identified in (c)(1) or (c)(2) above, the Board shall re-review the criteria submitted by the district for replacement of the facility prior to apportionment of the replaced facility.

Amend Section 1859.83. Excessive Cost Hardship Grant.

...

- (c) Excessive Cost to Construct a New School Project.
  - (1) With the exception of Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after August 27, 2003, if the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

(2) Excessive Cost Hardship Grants for Alternative Education schools for which the final plans and specifications for the project were accepted by the DSA on or after August 27, 2003 may be requested as follows:

(A) If the project is for an Alternative Education school on a site with no existing school facilities, the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms in the project:

No. of Classrooms	New School Allowance
1	\$434,700
2	\$527,400
3	\$902,070
4	\$1,007,100
5	\$1,114,830
6	\$1,222,650
7	\$1,330,380

8	\$1,438,200
9	\$1,545,930
10	\$1,653,660
11	\$2,120,760
12	\$2,234,970
13	\$2,349,270
14	\$2,463,480
15	\$2,577,690
16	\$2,691,990
17	\$2,806,200
18	\$2,920,500
19	\$3,034,710
20	\$3,148,920
21	\$3,263,220
22	\$3,377,430
23	\$3,491,730
24	\$3,605,940
25	\$3,720,150
26	\$3,834,450
27	\$3,948,660

The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

(B) If the project is for additional classroom(s) to an existing Alternative Education school, constructed under the provision of 1859.83(c)(2), the district is eligible for a New Construction Excessive Cost Hardship Grant calculated as follows:

1. Determine the amount as shown in the chart above in Section 1859.83(c)(2)(A) for the total combined number of classrooms in the current project and for all previous projects at the same site. In the first occurrence when the total number of classrooms exceed 27, the amount shown for 27 classrooms shall be used.
2. Subtract the sum of the amount previously apportioned for the New Construction Grant and the funding provided pursuant to Section 1859.83(c)(2) for the sum of the number of classrooms for all previous projects at the same site (exclude the classrooms in the current project) from (B)1.
3. Subtract the New Construction Grant for the current project from the result in (B)2.

...

Amend Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
  - (1) \$5,226.82 for each elementary school pupil.
  - (2) \$5,533.65 for each middle school pupil.
  - (3) \$7,225.94 for each high school pupil.
  - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.

- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
  - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.
- (e) If the Preliminary Application request is for a ~~small~~ new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, by 25 for General Education elementary school pupils, 27 for General Education middle and high school pupils, 18 for Alternative Education elementary, middle, and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
  - (1) The district has requested an increase for multilevel construction pursuant to (b) above.
  - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.
  - (3) The value of the property as determined in Section 1859.145.1(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (h) For purposes of COS projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Applications received no later than May 1, 2003. For purposes of Charter School projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2003.
- (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
- (j) If the district received an apportionment prior to November 5, 2002 pursuant to Section 1859.81.1(e), an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.

The amounts shown in (a) shall be adjusted annually in a manner prescribed in Section 1859.71.

## ATTACHMENT C

Examples How Attachment A Square Footage Recommendations are the Basis of the  
New School Allowance for Alternative Education Schools

### Square Footage Calculations

No. Class-rooms	Pupils		Facility Square Footage (1,030 x No. Crs)	Multi-purpose`	Toilet	Admin	Office/Conf etc.	Library	Total Square Footage *
	Minimum	Maximum							
2	19	36	2,060	2,500	300	1,000	-	0	5,860
6	91	108	6,180	4,000	540	800	1,000	1,065	13,585
15	253	270	15,450	7,200	1,350	1,880	1,000	1,761	28,641

\* Provides benefit of maximum number of pupils per classroom in each square footage category.

### New School Allowance for an Initial Alternate Education School Application

No. Class-rooms	Pupils		Facility Square Footage	Multiplied by \$90/sq.ft.**	New School Allowance
	Minimum	Maximum			
2	19	36	5,860	90	\$ 527,400
6	91	108	13,585	90	\$ 1,222,650
15	253	270	28,641	90	\$ 2,577,690

\*\* The 1998 SFP high school grant of \$7,200 divided by an average of 80 square foot per pupil.

**ATTACHMENT D**

<b>ALTERNATIVE EDUCATION</b>		
<b>NEW SCHOOL GRANT</b>		
<b>Classrooms</b>	<b>1998 Additional Grant New School Allowance*</b>	<b>Additional Grant New School Allowance Effective 1-1-03</b>
1	\$ 434,700	\$ 488,224
2	\$ 537,400	\$ 603,568
3	\$ 902,070	\$ 1,013,139
4	\$ 1,007,100	\$ 1,131,102
5	\$ 1,114,830	\$ 1,252,095
6	\$ 1,222,650	\$ 1,373,192
7	\$ 1,330,380	\$ 1,494,187
8	\$ 1,438,200	\$ 1,615,282
9	\$ 1,545,930	\$ 1,736,277
10	\$ 1,653,660	\$ 1,857,270
11	\$ 2,120,760	\$ 2,381,884
12	\$ 2,234,970	\$ 2,510,156
13	\$ 2,349,270	\$ 2,638,529
14	\$ 2,463,480	\$ 2,766,802
15	\$ 2,577,690	\$ 2,895,074
16	\$ 2,691,990	\$ 3,023,446
17	\$ 2,806,200	\$ 3,151,721
18	\$ 2,920,500	\$ 3,280,094
19	\$ 3,034,710	\$ 3,408,367
20	\$ 3,148,920	\$ 3,536,639
21	\$ 3,263,220	\$ 3,665,011
22	\$ 3,377,460	\$ 3,793,318
23	\$ 3,491,730	\$ 3,921,657
24	\$ 3,605,940	\$ 4,049,931
25	\$ 3,720,150	\$ 4,178,203
26	\$ 3,834,450	\$ 4,306,576
27	\$ 3,948,660	\$ 4,434,848

**ATTACHMENT E**

**New Alternative Education School Offset Example**

**INITIAL FUNDING - New Alternative Education School 2 classrooms, 36 pupil High School**

	<i>New Proposal</i>
	<i>Amounts</i>
<b>Base Grant</b>	\$ 291,096
<b>New School Grant</b>	\$ 312,472
<b>Total</b>	\$ 603,568*

**SUBSEQUENT FUNDING REQUEST - 3 Additional Classroom Request (54 Pupils)**

	<i>New Proposal</i>
	<i>Amounts</i>
<b>New School Amount for Total CR's</b>	\$ 1,252,095
<b>Offset New School Amount for All Previous CR's</b>	\$ (603,568)
<b>Subtract Current Project's Base Grant</b>	\$ (436,644)
<b>New School Grant Funding for this Project</b>	\$ 211,883
<b>Base Grant for this Project</b>	\$ 436,644
<b>Base Grant and New School Funding for this Project*</b>	\$ 648,527 *

**SUBSEQUENT FUNDING REQUEST – 4 Additional Classroom Request (72 Pupils)**

	<i>New Proposal</i>
	<i>Amounts</i>
<b>New School Amount for Total CR's</b>	\$ 1,736,277
<b>Offset New School Amount for All Previous CR's</b>	\$ (1,252,095)
<b>Subtract Current Project's Base Grant</b>	\$ (582,192)
<b>New School Grant Funding for this Project</b>	\$ (98,010)
<b>Base Grant for this Project</b>	\$ 582,192
<b>Base Grant and New School Funding for this Project*</b>	\$ 484,182 *

**\*IMPORTANT NOTE:** In addition to the amount shown, each project can access all excessive costs and additional grants for which it would otherwise be eligible, (i.e., small school, geographic, urban, multistory, project assistance, site development, site acquisition, etc.).

**GENERAL INFORMATION**

As part of the district's request for new construction funding under the School Facility Program (SFP), a determination of the district's existing school building capacity must be made. This one time report and the Form SAB 50-01 are used to calculate the district's eligibility for SFP new construction funding. Once the district's existing school building capacity has been determined on this form, a determination of the district's baseline eligibility may be made, by completion of the Form SAB 50-03.

The following documentation is necessary and must be submitted with this form:

- A drawing of each school site within the boundaries of the district or the high school attendance area (HSAA) or Super HSAA that identifies all permanent and portable classrooms on the site that are included in the gross classroom inventory pursuant to Section 1859.31.
- A summary of each school site that identifies each classroom that qualifies for exclusion pursuant to Section 1859.32.
- A summary of all classrooms and exclusions for all sites within the district, the HSAA or Super HSAA (as appropriate).

A high school district, unified school district, or county superintendents of schools may file on a HSAA or Super HSAA basis as provided under Education Code Section 17071.76 and

Section 1859.41. In that case, the facilities in that HSAA or Super HSAA shall be reported on this form.

After the Board has determined the initial baseline eligibility, this form is used to adjust that baseline eligibility pursuant to Section 1859.51 for the following:

- A change in the classroom inventory that was reported at the time the district requested its initial determination of existing school building capacity as a result of special day class or Alternative Education loading.
- Errors and/or omissions of the classroom inventory that was reported at the time the district requested its initial determination of existing school building capacity.
- A change in the classroom inventory of the district as a result of a reorganization election.

This form is not used for modernization eligibility or funding applications.

For a list of the documents that must be submitted in order for the Office of Public School Construction (OPSC) to deem an eligibility request for new construction complete and ready for OPSC processing, consult the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov).

**SPECIFIC INSTRUCTIONS****Part I—Classroom Inventory**

Indicate if this request is for a new or adjusted Existing School Building Capacity determination. The district must first prepare a gross classroom inventory and make adjustment to the inventory pursuant to Sections 1859.31 and 1859.32. Contact the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for an Excel worksheet for preparation of this inventory. To assure timely processing of your application, districts must provide drawing(s) of each school site within the district, the HSAA or Super HSAA with the eligibility request to the OPSC (if not previously submitted to the OPSC). The drawing(s) must identify all permanent and portable classrooms and the specific reason why any classroom was excluded from the inventory pursuant to Section 1859.32. Label each site as General Education or Alternative Education.

Once the classroom inventory has been prepared, identify the classrooms in that inventory as follows:

Lines 1–6, report those classrooms included in the inventory that meet the definition of portable as provided by subdivision (k) of Education Code Section 17070.15 as follows:

1. Leased under the provisions of the State Relocatable Program. This includes portables approved for purchase, but with outstanding payments.\*
2. Leased or lease-purchased for less than five years. Include interim housing portables lease-purchased for less than five years.
3. Leased for interim housing purposes for less than five years.†

4. Leased for interim housing for five years or more.‡
5. Leased or lease-purchased for five years or more. Include interim housing portables lease-purchased for five years or more.
6. Owned, including those acquired under the State Relocatable Program (i.e., no outstanding payments). Include interim housing portables owned.
7. Report the remaining classrooms in the inventory that do not meet the "Portable" definition that were reported on lines 1–6.

When reporting classrooms, identify each classroom based on its most typical use for grades K–6, 7–8, 9–12 or non-severely disabled individuals with exceptional needs (non-severe) and severely disabled individuals with exceptional needs (severe). If this request is to adjust the inventory for non-severe, or severe, or Alternative Education pupil loading, the total classrooms reported must be equal to the classrooms reported at the time of the district request for initial determination of existing school building capacity. In no event may the number of classrooms reported for non-severe or severe pupils exceed the number of classrooms needed to house the projected number of non-severe and severe pupils shown on the Form SAB 5001 using loading standards of 13 pupils for non-severe and 9 pupils for severe classrooms.

Continuation high classrooms must be counted as 9–12 teaching stations.

\*State Relocatable Classrooms approved for purchase by the Board shall be deemed owned by the district when the final lease payment is made to the Board, otherwise it is deemed to be leased, not lease-purchased.

†Interim housing is defined as temporary classrooms used for modernization, therefore only portables leased may be considered interim. Lease-purchase agreements are not acceptable.

**Part II—Available Classrooms**

Once all classrooms have been identified and reported as either permanent or portable in Part I, the district may use one of two options for determining the final count of available classrooms which will be used to calculate the “existing school building capacity” of the district, the HSAA or Super HSAA.

**Option A**

Report the classrooms in Part I as reported on lines 4, 5, 6 and 7. Enter the totals on line e for grades General Education K–6, 7–8, 9–12, Alternative Education K–6, 7–8, 9–12, non-severe or severe.

**Option B**

- Enter the totals of all classrooms reported in Part I, line 8 as either General Education K–6, 7–8, 9–12, Alternative Education K–6, 7–8, 9–12, non-severe or severe.
- Enter the total number of all portable classrooms reported in Part I, lines 1, 2, 5 and 6.
- In the total column, report 25 percent of the total permanent classrooms reported in Part I, line 7. Round up.
- Subtract the total of line c from the total of line b and assign the total portables as either General Education K–6, 7–8, 9–12, Alternative Education K–6, 7–8, 9–12, non-severe or severe. Assignment of classrooms must be proportionate to the portable classrooms reported on lines 1, 2, 5, and 6 of Part I for each grade group category. Classrooms assigned at a grade group to a category cannot exceed the classrooms reported for that grade group column on line a.
- Subtract line d from line a for grades K–6, 7–8, 9–12, non-severe or severe.

Unless specifically requested by the district, the OPSC will use the “total” of Option A or Option B that minimizes the existing school building capacity of the district, the HSAA or Super HSAA.

**Part III—Determination of Existing School Building Capacity**

- Subtotal Classroom Capacity—After determining the lesser of the totals on line e of Option A or Option B in Part II, multiply the General Education K–6 classroom total by 25, the General Education 7–8 and 9–12 classroom totals by 27, the Alternative Education K–6, 7–8, 9–12 classroom totals by 18, the non-severe classrooms by 13 and the severe classrooms by 9, for the option selected.
- Total Classroom Capacity—Enter the sum of the General Education and Alternative Education classrooms for each grade group.
- SER Adjustment—Enter one of the following:
  - 6 percent of the K–6 pupil capacity as reported on line ~~12~~, and 6 percent of the K–6 non-severe and severe classroom capacity for elementary and unified districts or unified districts filing on a HSAA or Super HSAA. The K–6 non-severe and severe classroom capacity shall be determined by applying a ratio of the K–6 classroom capacity reported on line ~~12~~ to the K–12 classroom capacity reported on line ~~12~~, multiplied by the non-severe and severe classroom capacity reported on line ~~12~~. Unified districts may allocate the 6 percent amount at any grade group.
  - Indicate zero (0) if the elementary or unified district meets the substantial enrollment requirement (SER) or the district qualifies for waiver of the SER authorized by Education Code Sections 17017.6 and 17017.7 (c).
  - Indicate zero (0) if applicant is a high school district.
- Operational Grants (OG)—Enter the number of students in grade groups K–6, 7–8, 9–12, non-severe or severe that were included in the latest report by the California Department of Education (CDE) pursuant to Education Code Section 42268 for that district, less the number of pupils at a school on multi-track year round enrollment (MTYRE) calendar that has a density of at least 200 pupils per acre when the district has at least 40 percent of its enrollment on MTYRE as of the date of determination of the existing school building capacity of the district.
- Report the greater of the totals of grade groups K–6, 7–8, 9–12, non-severe and severe for line ~~23~~ or ~~34~~.
- Total—Enter the total of lines ~~12~~ and ~~45~~. This represents the “existing school building capacity” of the district, the HSAA or Super HSAA.

SCHOOL DISTRICT	FIVE-DIGIT DISTRICT CODE NUMBER (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	HIGH SCHOOL ATTENDANCE AREA (HSAA) OR SUPER HSAA (IF APPLICABLE)

**Part I—Classroom Inventory**  
 NEW     ADJUSTED

	K-6		7-8		9-12		Special Day Class		Total
	Gen Ed	Alt Ed	Gen Ed	Alt Ed	Gen Ed	Alt Ed	Non-Severe	Severe	
Line 1. Leased State Relocatable Classrooms									
Line 2. Portable Classrooms leased less than 5 years									
Line 3. Interim Housing Portables leased less than 5 years									
Line 4. Interim Housing Portables leased at least 5 years									
Line 5. Portable Classrooms leased at least 5 years									
Line 6. Portable Classrooms owned by district									
Line 7. Permanent Classrooms									
Line 8. Total Part I (Lines 1 through 7)									

**Part II—Available Classrooms**

**Option A**

	K-6		7-8		9-12		Special Day Class		Total
	Gen Ed	Alt Ed	Gen Ed	Alt Ed	Gen Ed	Alt Ed	Non-Severe	Severe	
a. Part I, Line 4									
b. Part I, Line 5									
c. Part I, Line 6									
d. Part I, Line 7									
e. Total (a, b, c and d)									

**Option B**

a. Part I, Line 8									
b. Part I, Lines 1, 2, 5 and 6 (total only)									
c. 25 Percent of Part I, Line 7 (total only)									
d. Subtract c from b (enter 0 if negative)									
e. Total (a minus d)									

**Part III—Determination of Existing School Building Capacity**

	K-6		7-8		9-12		Special Day Class	
	Gen Ed	Alt Ed	Gen Ed	Alt Ed	Gen Ed	Alt Ed	Non-Severe	Severe
Line 1. Subtotal Classroom Capacity								
Line 2. Total Classroom Capacity								
Line 23. SER Adjustment								
Line 34. Operational Grants								
Line 45. Greater of Line 3 or 4								
Line 56. Total of Lines 2 and 5								

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized district representative by the governing board of the district; and,
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction (OPSC). In the event a conflict should exist, then the language in the OPSC form will prevail.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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**GENERAL INFORMATION**

This form is used by the School District to calculate the district's eligibility for new construction and modernization funding under the School Facility Program (SFP). The business address entered on the application should be the location that the school district wishes the Office of Public School Construction (OPSC) to mail all correspondence regarding this application.

**Part I**

Complete to designate or change the authorized district representative and/or alternate. Should this be the case, complete the school district information, identify the district representative(s) in Part I and complete the district certification information at the bottom of the form, including the date the district's governing board took appropriate action.

**Part II**

Complete for new construction baseline eligibility determination. This part is also used to request an adjustment to an approved new construction baseline eligibility as a result of subdivisions (f), (k), ~~and (l)~~ and (o) of Section 1859.51 due to either errors or omissions of information submitted by the district when it requested the initial baseline eligibility, because of a reorganization election that has changed the classroom inventory of the district or to change the classroom inventory that was reported at the time the district requested its initial determination of existing school building capacity as a result of special day class or Alternative Education classroom loading. The following documentation is necessary to determine new construction baseline eligibility and must be submitted with this form:

- A completed Form SAB 50-01 based on the latest enrollment data.
- A completed Form SAB 50-02.

**Part III**

Complete for modernization baseline eligibility determination at a specific site. Districts must be able to provide a drawing of the site where eligibility for modernization is generated with its request for an eligibility determination. The drawing must identify all permanent and

portable classrooms on the site and their ages. If the district intends to use the square footage method in Option B, the drawings must also identify the square footage of all facilities on the site. Part III is also used to request an adjustment to the approved baseline eligibility at a specific site as a result of subdivisions (c), (d), (e), ~~and (g)~~ and (i) of Section 1859.61 due to either an increase in enrollment, additional facilities becoming at least 20/25 years old, because of errors or omissions of information submitted by the district when it requested the initial baseline eligibility for the site or to change the classroom inventory that was reported at the time the district requested its initial determination of existing school building capacity as a result of special day class or Alternative Education classroom loading. The following documentation is necessary (if not previously submitted to the OPSC) to determine modernization baseline eligibility and must be submitted with this form (as appropriate):

- Site diagram of school where modernization funding is requested. The diagram must indicate the ages and number of all permanent and portable classrooms on the site in accordance with the gross classroom inventory as provided by Section 1859.31.
- If the modernization eligibility will be determined by Option B, the site drawings must also include square footage and/or dimensions of all buildings on the site.

It is not necessary to complete Part III if the district is only requesting funding for new construction and it is not necessary to complete Part II if the district is only requesting funding for modernization.

A district may request that eligibility for new construction or modernization be reviewed and approved by the Board pursuant to Section 1859.20 prior to submitting Form SAB 50-04 to the Board.

For a list of the documents that must be submitted in order for the OPSC to deem an eligibility request for new construction or modernization complete and ready for OPSC processing, consult the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov).

**SPECIFIC INSTRUCTIONS****Part I—District Representative Information**

Enter the name(s) of district employee(s) that can act on behalf of the district's board. A consultant who is on contract with the district to communicate with the OPSC on behalf of the district's board may be listed. The designee of the Superintendent of Public Instruction shall file modernization applications on behalf of the California Schools for the Deaf and Blind.

**Part II—New Construction Eligibility Determination**

Indicate if this request is for a new or adjusted eligibility determination. Enter the district-wide information unless filing on a High School Attendance Area (HSAA) or Super HSAA basis. The enrollment projection and the existing school building capacity data are obtained from information reported and determined on the Form SAB 50-01 and the Form SAB 50-02. Once the OPSC has verified the information provided on these forms, it will automatically be transferred to this form to determine the district's eligibility for new construction. The district may manually enter the information from these forms and compute its eligibility; however, it may be adjusted by the OPSC based on verification of Form SAB 50-01 and Form SAB 50-02.

1. Enter the five year projected enrollment as shown in Part G of Form SAB 50-01 for grades K–6, 7–8, 9–12 and for the total of non-severe and severe special day class (SDC) projected enrollment.

2. Enter the amounts on Form SAB 50-02, Part III, line 56 for grades K–6, 7–8, 9–12, non-severe and severe.
3. New construction eligibility (i.e., the "baseline eligibility") is determined by subtracting the existing school building capacity (line 2) from the projected five year enrollment (line 1). Report negative numbers in brackets.

Adjustments to the district's new construction baseline eligibility will be made by the OPSC pursuant to Section 1859.51. Contact your project manager at the OPSC for the adjusted baseline eligibility for future request for new construction grants.

**Part III—Modernization Eligibility Determination**

Modernization eligibility is calculated based on information at a specific site when modernization SFP grants are requested within the district. Therefore, completion of Form SAB 50-01 and Form SAB 50-02, are not needed to determine eligibility for modernization funding. Since the eligibility is site specific, the district must submit a separate Form SAB 50-03 for each site for which it is requesting modernization funding. Indicate if this request is for new baseline eligibility determination or for an adjustment to an approved baseline eligibility as a result of Section 1859.61. Specify whether or not the site is an Alternative Education school.

The district may use one of two options to calculate its modernization eligibility at a specific site within the district. The district may select only one option. To assure timely processing of the application, districts must provide a drawing of the site (if not previously submitted to the OPSC) where modernization funds are generated with the eligibility request to the OPSC. The drawing must identify all permanent and portable classrooms and their ages on the site. If the square footage of Option B is selected, the drawings must also identify the square footages of all facilities on the site. In item 1, enter the school site name from the California Public School Directory published by the California Department of Education. For purposes of determining the age of the building for modernization funding, the 25/20 year period shall begin 12 months after the plans for the building were approved by the Division of the State Architect.

1. Enter school name.

**Option A**

2. Enter the number of permanent classrooms by grade level at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are at least 25 years old that were not previously modernized with Lease-Purchase Program (LPP) State funds. Include permanent classrooms previously reported as at least 25 years old. If the school is a 6-8 middle school only, then report all classrooms at the 7-8 grade level. If this request is to adjust the classrooms reported for non-severe or severe pupil loading, the total classrooms reported must be equal to the classrooms reported at the time of the district request for initial modernization baseline eligibility. In no event may the number of classrooms reported for non-severe or severe pupils exceed the number of classrooms needed to house non-severe and severe pupils as reported on line 6 using loading standards of 13 for non-severe and 9 for severe classrooms. For purposes of the California Schools for the Deaf and Blind, the loading standard for these severe pupils shall be 9.
3. Enter the total number of portable classrooms by grade level at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 that are at least 20 years old that were not previously modernized with LPP State funds. Include portable classrooms previously reported as at least 20 years old. If the school is a 6-8 middle school only, then report all classrooms at the 7-8 grade level. If this request is to adjust the classrooms reported for non-severe or severe pupil loading, the total classrooms reported must be equal to the classrooms reported at the time of the district request for initial modernization baseline eligibility. In no event may the number of classrooms reported for non-severe or severe pupils exceed the number of classrooms needed to house non-severe and severe pupils as reported on line 6 using loading standards of 13 for non-severe and 9 for severe classrooms.
4. Add lines 2 and 3 by the grades shown.

5. For General Education schools, multiply line 4 by 25 for K-6, 27 for 7-8 and 9-12, 13 for non-severe and 9 for severe. For Alternative Education schools, multiply line 4 by 18 for K-6, 7-8 and 9-12, 13 for non-severe and 9 for severe.
6. Enter the latest California Basic Educational Data Systems (CBEDS) enrollment for the school site identified as it would have been reported utilizing the criteria in Parts A, B and C of Form SAB 50-01. Report continuation high pupils as 9-12. If the school is a 6-8 middle school only, report 6th graders as 7-8.
7. Modernization eligibility (i.e., the baseline eligibility) is the lesser of each column of lines 5 or 6.

**Option B**

2. Enter the total number of permanent classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 or all permanent square footage at the site that is at least 25 years old that was not previously modernized under the LPP, the SFP or with Proposition 1A funds.
3. Enter the total number of portable classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 or all portable square footage at the site that is at least 20 years old that was not previously modernized under the LPP, the SFP or with Proposition 1A funds.
4. Add lines 2 and 3.
5. Enter the remaining number of permanent and portable classrooms at the school site that would have been included in the Gross Classroom Inventory pursuant to Section 1859.31 or all remaining permanent or portable space that is under 25/20 years old.
6. Add lines 4 and 5.
7. Determine the percentage of space on the site that is at least 25/20 years old by dividing line 4 by line 6. Round to four decimal places.
8. Enter the latest CBEDS enrollment for each grade group at the school site identified as it would have been reported utilizing the criteria in Parts A, B and C of Form SAB 50-01. Report continuation high pupils as 9-12. If the school is a 6-8 middle school only, report 6th graders as 7-8.
9. Modernization eligibility (i.e., the baseline eligibility) is determined by multiplying line 7 by each grade group reported in line 8. Round up.

If this request is only to report increases in enrollment at the site for purposes of increasing eligibility, report only the CBEDS enrollment in either Option A or B.

Adjustments to the District's modernization baseline eligibility will be made pursuant to Section 1859.61. These adjustments will automatically be made by the OPSC. Contact your project manager at the OPSC for the adjusted baseline eligibility for future requests for modernization grants at the specific site.

SCHOOL DISTRICT	FIVE-DIGIT DISTRICT CODE NUMBER (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
BUSINESS ADDRESS	HIGH SCHOOL ATTENDANCE AREA (HSAA) OR SUPER HSAA (IF APPLICABLE)
CITY/COUNTY	

**Part I—District Representative Information**

The following individual(s) have been designated as district representative(s) by school board minutes or the designee of the Superintendent of Public Instruction:

DISTRICT REPRESENTATIVE	TELEPHONE NUMBER	E-MAIL ADDRESS
DISTRICT REPRESENTATIVE	TELEPHONE NUMBER	E-MAIL ADDRESS

**Part II—New Construction Eligibility Determination**     NEW     ADJUSTED

	K-6	7-8	9-12	Non-Severe	Severe
<u>Line 1.</u> Projected Enrollment (Part G, Form SAB 50-01)					
<u>Line 2.</u> Existing School Building Capacity (Part III, Line 56 of Form SAB 50-02)					
<u>Line 3.</u> New Construction Baseline Eligibility (Line 1 minus Line 2)					

**Part III—Modernization Eligibility Determination**     NEW     ADJUSTED  
 Is this an Alternative Education school?     YES     NO

	K-6	7-8	9-12	Non-Severe	Severe
<u>Line 1.</u> School Name					
<b>Option A</b>					
<u>Line 2.</u> Permanent classrooms at least 25 years old					
<u>Line 3.</u> Portable classrooms at least 20 years old					
<u>Line 4.</u> Total (Lines 2 and 3)					
<u>Line 5.</u> Multiply Line 4 by: Gen Ed—25 for K-6, 27 for 7-8 and 9-12, 13 for Non-Severe and 9 for Severe Alt Ed—18 for K-6, 7-8 and 9-12, 13 for Non-Severe and 9 for Severe					
<u>Line 6.</u> CBEDS enrollment at school					
<u>Line 7.</u> Modernization Eligibility (lesser of each column of Lines 5 or 6)					

**Option B**

<u>Line 2.</u> Permanent space at least 25 years old (report by classroom or square footage)					
<u>Line 3.</u> Portable space at least 20 years old					
<u>Line 4.</u> Total (Lines 2 and 3)					
<u>Line 5.</u> Remaining permanent and portable space (report by classroom or square footage)					
<u>Line 6.</u> Total (Lines 24 and 35)					
<u>Line 7.</u> Percentage (divide Line 4 by Line 6)					
	K-6	K-6	K-6	Non-Severe	Severe
<u>Line 8.</u> CBEDS enrollment at school					
<u>Line 9.</u> Modernization Eligibility (multiply Line 7 by each grade group reported on Line 8)					

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- I am designated as an authorized district representative by the governing board of the district or the designee of the Superintendent of Public Instruction; and,
- A resolution or other appropriate documentation supporting this application under Chapter 12.5, Part 10, Division 1, commencing with Section 17070.10, et seq., of the Education Code was adopted by the School District's Governing Board or the designee of the Superintendent of Public Instruction on \_\_\_\_\_, \_\_\_\_\_; and,
- This form is an exact duplicate (verbatim) of the form provided by Office of Public School Construction. In the event a conflict should exist, then the language in the OPSC form will prevail.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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**GENERAL INFORMATION**

Once the Board has determined or adjusted the district's eligibility for either new construction or modernization funding on Form SAB 50-03 the district may file an application for funding by use of this form. If the district has a pending reorganization election that will result in the loss of eligibility for the proposed project, the district may not file an application for funding until the Board has adjusted the district's new construction baseline eligibility as required in Section 1859.51. This may be accomplished by completion of Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03.

For purposes of Education Code Section 17073.25, the California Department of Education (CDE) is permitted to file modernization applications on behalf of the California Schools for the Deaf and Blind.

Requests for funding may be made as follows:

A separate apportionment for site acquisition for a new construction project for environmental hardship pursuant to Section 1859.75.1. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

- Form 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted).
- Contingent site approval letter from the CDE.
- Preliminary appraisal of property.
- Approval letter from the Department of Toxic Substances Control.

A separate apportionment for site acquisition and/or design costs for a new construction project pursuant to Section 1859.81.1. This apportionment is available only to districts that meet the financial hardship criteria in Section 1859.81. Districts may apply for a separate apportionment for the design and for site acquisition on the same project. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

- Form SAB 50-01, Form SAB 50-02, and Form SAB 50-03 (if not previously submitted).
- Contingent site approval letter from the CDE (site apportionment only).
- Preliminary appraisal of property (site apportionment only).

A separate apportionment for district-owned site acquisition cost pursuant to Section 1859.81.2. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

- Form SAB 50-01, Form SAB 50-02, and Form SAB 50-03 (if not previously submitted).
- Site approval letter from the CDE.
- Appraisal of district-owned site.
- Cost benefit analysis as prescribed in Section 1859.74.6 or a copy of the Board finding that the non-school function on the district-owned site must be relocated.

A separate apportionment for design cost for a modernization project pursuant to Section 1859.81.1. This apportionment is available only to districts that meet the financial hardship criteria in Section 1859.81. For purposes of this apportionment, the Form SAB 50-03 must accompany this form (if not previously submitted).

A New Construction Adjusted Grant pursuant to Section 1859.70. If the funding request includes site acquisition, the proposed site must either be owned by the district, in escrow, or the district has filed condemnation proceedings and received an order of possession of the site. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

- Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03 (if not previously submitted).
- Site/plan approval letter from the CDE.
- Appraisal of property if requesting site acquisition funds.
- Plans and specifications (P&S) for the project that were approved by the DSA. Submittal of plans may be on CD-ROM or "Zip Drive" readable in AutoCAD 14. The specifications may be provided on a diskette that is IBM compatible.
- Cost estimate of proposed site development, if requesting site development funding.
- ~~School board resolution if requesting more grants than the capacity of the project or to use grant eligibility at another grade level. Refer to Section 1859.77.2.~~

- If this request is pursuant to Section 1859.77.2 and the district's housing plan is other than those listed in the certification section of this form, a copy of the school board resolution and the approved housing plan.

- If the site apportionment is requested pursuant to Regulation Section 1859.74.5, a cost benefit analysis as prescribed in Regulation Section 1859.74.6 or a copy of the Board finding that the non-school function on the district-owned site must be relocated.

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

- Form SAB 50-03 (if not previously submitted).
- P&S for the project that were approved by the DSA.
- DSA approval letter for elevator to meet handicapped compliance, if funding is requested.
- Plan approval letter from the CDE.
- Districtwide enrollment data on Form SAB 50-01 when requesting project assistance (if not previously submitted).
- If the request includes funding for 50 year old permanent buildings pursuant to Section 1859.78.6, a site diagram identifying all buildings to be modernized in the project. The diagram must specify those buildings that are at least 50 years old.

Prior to acceptance of an application for funding that includes a financial hardship request, the district must have its financial hardship status "pre-approved" by the Office of Public School Construction (OPSC). To apply for a financial hardship "pre-approval", consult the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov).

If the district is requesting New Construction funding after the initial baseline eligibility was approved by the Board and the district's current CBEDS enrollment reporting year is later than the enrollment reporting year used to determine the district's baseline eligibility or adjusted eligibility, the district must complete a new Form SAB 50-01 based on the current year CBEDS enrollment data, and submit it to the OPSC with this form. A small district with 2,500 or less enrollment as defined in Section 1859.2 will not have its eligibility reduced for a period of three years from the date the district's baseline eligibility was approved by the Board as a result of reduction in projected enrollment.

For a list of the documents that must be submitted in order for the OPSC to deem a funding request for new construction or modernization complete and ready for OPSC processing, consult the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov).

For purposes of completing this form for a Final Charter School Apportionment, a charter school shall be treated as a school district.

**SPECIFIC INSTRUCTIONS**

The district must assign a Project Tracking Number (PTN) to this project. The same PTN is used by the OPSC, the DSA and the CDE for all project applications submitted to those agencies to track a particular project through the entire state application review process. If the district has already assigned a PTN to this project by prior submittal of the P&S to either the DSA or the CDE for approval, use that PTN for this application submittal. If no PTN has been previously assigned for this project, a PTN may be obtained from the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) "PT Number Generator."

**1. Type of Application**

Check the appropriate box that indicates the type of School Facility Program (SFP) grant the district is requesting for purposes of new construction, modernization, a separate design and/or site apportionment, site apportionment as an environmental hardship or New Construction (Final Apportionment). If the application is for modernization of a California School for the Deaf and Blind, the CDE shall check the box identified as Modernization of

California Schools for the Deaf/Blind. If the request is for a separate design apportionment, the CDE shall check the appropriate box. If the eligibility for this project was established as a result of the need for new or replacement facilities pursuant to Section 1859.82 (a) and (b), or rehabilitation pursuant to Section 1859.83 (e), check the appropriate box.

If this request is for an addition to an existing site and advance funding for the evaluation and RA costs, check the appropriate box and refer to Section 1859.74.4.

If this request is to convert a Preliminary Apportionment or a Preliminary Charter School Apportionment to a Final Apportionment, check the New Construction (Final Apportionment or Final Charter School Apportionment) box.

If the district is requesting a separate site and/or design apportionment, complete boxes 2a, 3, 4, the site acquisition data in box 5 (d and e), and boxes 12, 13, 14, 15 and 18 only.

## 2. Type of Project

- Select the type of project that best represents this application request and enter the number of pupils assigned to the project for each grade group. Include pupils to be housed in a new or replacement school authorized by Section 1859.82 (a). The amount entered cannot exceed the district's baseline eligibility determined on Form SAB 50-03 and will be the basis for the amount of the new construction or modernization grants provided for the project.

If this request is for a Final Apportionment, the pupils assigned to the project must be at least 75 percent, but not more than 100 percent, of the pupils that received the Preliminary Apportionment. Refer to Section 1859.147.

- Check the box if the project is eligible for funding for 50 year or older permanent buildings and report, at the option of the district:
  - The total number of classrooms or the total square footage building area to be modernized as part of the project. Refer to Section 1859.78.6(b)(1)(A) or (b)(2)(A).
  - The total number of permanent classrooms or the total permanent square footage building area to be modernized as part of the project that is at least 50 years old. Refer to Section 1859.78.6(b)(1)(B) or (b)(2)(B).
- Indicate if this request is for funding of a 6–8 school and/or an Alternative Education school.
- Check the box(es) if the district requests and the project qualifies for additional funding for fire code requirements authorized in Sections 1859.71.2 or 1859.78.4.
- Check the applicable box if the district is requesting additional pupil grants assigned to the project that exceed the capacity of the project or if the pupils assigned represent eligibility determined at another grade level and check the appropriate box to indicate under which regulation the district is applying. The pupil capacity of the project may be determined by multiplying the classrooms reported in box 3 by 25 for K–6; 27 for 7–8, 9–12 grades at General Education schools; 18 for K–6, 7–8, 9–12 grades at Alternative Education schools; 13 for non-severe and 9 for severe .
- If the request is for replacement facilities pursuant to Section 1859.82 (a) or (b) on the same site, check the facility hardship box.

## 3. Number of Classrooms

Enter the:

- Number of classrooms as shown on the plans and specifications (P&S). If there was demolition at the site, report the net increase in the number of classrooms showing in the P&S.
- Master plan site size, as recommended by the California Department of Education.
- Recommended site size, as determined by the California Department of Education.
- Existing Useable Acres already owned at that location (if any).
- Proposed Useable Acres that was/will be purchased as part of the application (if any).

## 4. Financial Hardship Request

Check the box if the district is requesting financial hardship assistance because it is unable to meet its matching share requirement. Refer to Section 1859.81 for eligibility criteria. Districts requesting financial assistance must have received a pre-approval for financial hardship status by the OPSC. Consult the OPSC Web site at [www.opsc.dgs.ca.gov](http://www.opsc.dgs.ca.gov) for details and necessary documentation needed in order to determine eligibility.

## 5. New Construction Additional Grant Request

Check the appropriate box(es) if the district requests an augmentation to the new construction grant for “additional” grants for the items listed or for replacement facilities pursuant to Section 1859.82 (a) and (b). Refer to Sections 1859.72 through 1859.76 and 1859.82 (a) and (b) for eligibility criteria. Enter the:

- Therapy area in square feet as provided in Section 1859.72.
- Multilevel classrooms in the P&S pursuant to Section 1859.73.
- Check the box if the district is requesting project assistance pursuant to Section 1859.73.1. If the district has not submitted a request for new construction baseline eligibility on a district-wide basis, it must submit a current Form SAB 50-01 based on district-wide enrollment data with this form.
- Indicate the site scenario that best represents the project request. If no RA is required, refer to Section 1859.74. If a RA is required on a site that is not leased or an addition to an existing site, refer to Section 1859.74.2. If RAs are required on a leased site or an addition to an existing site, refer to Sections 1859.74.3 or 1859.74.4, respectively. The limitation of 50 percent may be exceeded when unforeseen circumstances exist, the CDE determines that the site is the best available site, and substantiation that the costs are the minimum required to complete the evaluation and RA.
  - Enter 50 percent of the actual cost.
  - Enter 50 percent of the appraised value of the site. If the request is made pursuant to Regulation Section 1859.74.5, enter 50 percent of the appraised value.
  - Enter 50 percent of the allowable relocation cost.
  - Enter two percent of the lesser of the actual cost or appraised value of the site (minimum \$25,000).
  - Enter 50 percent of the Department of Toxic Substances Control (DTSC) fee for review and approval of the phase one environmental site assessment and preliminary endangerment assessment reports. Refer to Sections 1859.74, 1859.74.1, 1859.74.5, 1859.75, 1859.75.1 and 1859.81.1.

A project that received site acquisition funds under the Lease-Purchase Program (LPP) as a priority two project is not eligible for site acquisition funds under the SFP. A district-owned site acquired with LPP, SFP or Proposition 1A funds is not eligible for funding under Regulation Section 1859.74.5.

- Enter 50 percent of the amount allowable for hazardous materials/waste removal and/or remediation for the site acquired pursuant to Sections 1859.74.2, 1859.74.3, 1859.74.4, 1859.75.1 or 1859.81.1. If an RA is required, check the box.
- Enter 50 percent of eligible service-site development, off-site development including pedestrian safety paths and utilities costs allowed pursuant to Section 1859.76. Attach cost estimates of the proposed site development work which shall be supported and justified in the P&S. All cost estimates shall reflect 100 percent of the proposed work.
- If the district is requesting replacement facilities on the same site, enter the square footage requested as provided in Section 1859.82 (a) or (b).
- Enter the square feet of eligible replacement area as provided by Section 1859.73.2.
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to Section 1859.71.3, enter the percentage of energy efficiency that exceeds Title 24 requirements as prescribed in Section 1859.71.3 (a)(3).

**6. Modernization Additional Grant Request**

- a. Check the box if the district is requesting project assistance allowance pursuant to Section 1859.78.2. If the district has not submitted a request for new construction baseline eligibility on a district-wide basis, it must submit a current Form SAB 50-01 based on district-wide enrollment data with this form.
- b. If the district is requesting an Additional Grant for Energy Efficiency pursuant to Section 1859.78.5, enter the percentage of energy efficiently that exceeds Title 24 requirements as prescribed in Section 1859.78.5 (a)(3).
- c. Check the box if the district requests an additional grant for site development utility cost necessary for the modernization of 50 years or older permanent building(s). Enter 60 percent of the eligible costs allowable pursuant to Section 1859.78.7(a).

**7. Excessive Cost Hardship Request**

Check the appropriate box to request an augmentation to the New Construction or Modernization Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for a new two-stop elevator(s) and for additional stops in a modernization project are allowed only if required by the Division of the State Architect (DSA). Attach copy of the DSA letter that requires that the elevator(s) be included in the project for handicapped access compliance.

If the request is for the excessive cost grant for a new Alternative Education school pursuant to 1859.83(c)(2) and the district wishes to request less than the maximum allowance, please submit a letter along with this application indicating the amount desired.

If the request is for rehabilitation mitigation, report 80 percent or 60 percent (as appropriate) of health/safety rehabilitation mitigation cost for a modernization project as authorized by Section 1859.83 (e).

**8. Project Priority Funding Order**

Enter the priority order of this project in relation to other new construction applications submitted by the district on the same date. If applications are not received on the same date, the OPSC will assign a higher district priority to the application received first. Check the box(es) if the project meets the criteria outlined in Section 1859.92(c)(3),(4) and (6), as appropriate. This information is needed for purposes of priority points.

**9. Prior Approval Under the LPP**

If the project the district is requesting SFP grants for received a Phase P, S, or C approval under the LPP, report the application number of that project, regardless if the project actually received funding or was included on an "unfunded" list. Failure to report this information may delay the processing of the application by the OPSC.

**10. Prior Apportionment Under the SFP**

If the project received a separate apportionment under the SFP for either site and/or design, or site environmental hardship, enter the application number of the project. Failure to report this information may delay the processing of the application by the OPSC.

**11. Preliminary Apportionment Application Number**

- a.—If this request is to convert a Preliminary Apportionment to a Final Apportionment, enter the application number of the Preliminary Apportionment. Failure to report this information may delay the processing of the application by the OPSC.
- b.—If this request is to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment, enter the application number of the Preliminary Charter School Apportionment. Failure to report this information may delay the processing of the application by the OPSC.

**12. Alternative Developer Fee**

The district must report certain alternative fees collected pursuant to Government Code Section 65995.7, as of the date of application submittal to the OPSC. Refer to Section 1859.77 for details. Districts are advised that the OPSC may perform an audit of the developer fees collected prior to application approval by the Board.

**13. Adjustment to Baseline Eligibility**

Complete only for new construction projects. Pursuant to Section 1859.51 certain adjustments to the district's new construction baseline eligibility must be made each time a district submits Form SAB 50-04, to the OPSC for SFP grants. These adjustments are made automatically by the OPSC based on information reported by the district on this form.

- a. Report all additional classroom(s) provided after the district submitted its request for determination of its new construction baseline eligibility for the grades shown, with the exception of a classroom that is/was:
  - A trailer and transportable/towed on its own wheels and axles.
  - Excluded pursuant to Education Code Section 17071.30.
  - Under contract for lease, lease-purchase, or construction prior to January 1, 2000.
  - Under contract for lease, lease-purchase, or construction no more than 180 days before submittal of this form to the OPSC.
  - 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.
  - Acquired with Joint-Use Funds pursuant to Education Code Sections 17052 or 17077.40.
- b. If the eligibility for this project was determined on a high school attendance area (HSAA) or Super HSAA pursuant to Section 1859.41, enter the number of pupils by grade level type that were included in the latest report by the CDE pursuant to Education Code Section 42268 that received operational grants in that HSAA or Super HSAA.

**14. Pending Reorganization Election**

Complete only for new construction projects. Indicate if there is a pending reorganization election that will result in a loss of eligibility for this project. If the answer is "yes", the district must complete Form SAB 50-01, Form SAB 50-02 and Form SAB 50-03, to adjust the district's new construction baseline eligibility as a result of the reorganization and submit them with this form.

**15. Joint Use Facility/Leased Property**

Check the box if:

- a. the facilities to be constructed/modernized as part of this project will be for joint use by other governmental agencies.
- b. the new construction or modernization grants will be used for facilities located or to be located on leased property.

**16. Architect of Record or Licensed Architect Certification**

The architect of record or the licensed architect must complete this section.

**17. Architect of Record or Design Professional Certification**

The architect of record or the appropriate design professional must complete this section.

**18. Certification**

The district representative must complete this section.

The school district named below applies to the State Allocation Board via the Office of Public School Construction for a grant under the provisions of Chapter 12.5, Part 10, Division 1, commencing with Section 17070.10, et seq., of the Education Code and the Regulations thereto.

SCHOOL DISTRICT		APPLICATION NUMBER
SCHOOL NAME		PROJECT TRACKING NUMBER
COUNTY	DISTRICT REPRESENTATIVE'S E-MAIL ADDRESS	HIGH SCHOOL ATTENDANCE AREA (HSAA) OR SUPER HSAA (IF APPLICABLE)

**1. Type of Application—Check Only One**

- New Construction
- New Construction (Final Apportionment)
- New Construction (Final Charter School Apportionment)
- Modernization
- Modernization of California Schools for Deaf/Blind

**Separate Apportionment**

- Site Only—New Construction [Section 1859.81.1]
- Site Only (District owned)—New Construction [Section 1859.81.2]
- Site Only—Environmental Hardship [Section 1859.75.1]
- Design Only—New Construction [Section 1859.81.1]
- Design Only—Modernization
- Design Only—Modernization of California Schools for Deaf/Blind
- Facility Hardship [Section 1859.82(a)]
- Facility Hardship [Section 1859.82(b)]
- Rehabilitation [Section 1859.83(e)]
- Advance Funding for Evaluation and RA

**2. Type of Project**

- a.  Elementary School
- Middle School
- High School
- Pupils Assigned:**
- K–6 \_\_\_\_\_
- 7–8 \_\_\_\_\_
- 9–12 \_\_\_\_\_
- Non-Severe \_\_\_\_\_
- Severe \_\_\_\_\_
- b.  50 years or older building funding (Modernization only)
  - Total Classrooms/Square Footage \_\_\_\_\_
  - Classroom/Square Footage at least 50 years old \_\_\_\_\_
- c. Is this a 6–8 School?  Yes  No  
 If you answered yes, how many K–6 pupils reported above are sixth graders? \_\_\_\_\_  
 Is this an Alternative Education school?  Yes  No
- d.  Automatic Fire Detection/Alarm System
- Automatic Sprinkler System
- e. Is this a use of grant request pursuant to Section 1859.77.2?  Yes  No  
 Is this request pursuant to Section 1859.77.2(c)?  Yes  No  
 If yes, enter date of successful bond election: \_\_\_\_\_  
 Is this a use of grant request pursuant to Section 1859.77.3?  Yes  No  
 Is this request pursuant to Section 1859.77.3(c)?  Yes  No  
 If yes, enter date of successful bond election: \_\_\_\_\_
- f.  Facility Hardship (no pupils assigned)

**3. Number of Classrooms**

- Master Plan Acreage Site Size (Useable) \_\_\_\_\_
- Recommended Site Size (Useable) \_\_\_\_\_
- Existing Acres (Useable) \_\_\_\_\_
- Proposed Acres (Useable) \_\_\_\_\_

**4.  Financial Hardship Request—Must Have Pre-Approval by OPSC**

**5. New Construction Additional Grant Request—New Construction Only**

- a. Therapy: Toilets (sq. ft.) \_\_\_\_\_  
 Other (sq. ft.) \_\_\_\_\_
- b. Multilevel Construction (CRS)
- c.  Project Assistance
- d. Site Acquisition:
  - Leased Site
  - Additional Acreage to Existing Site
  - Addition to Existing Site
  - (1) 50 percent Actual Cost \$ \_\_\_\_\_
  - (2) 50 percent Appraised Value \$ \_\_\_\_\_
  - (3) 50 percent Relocation Cost \$ \_\_\_\_\_
  - (4) 2 percent (min. \$25,000) \$ \_\_\_\_\_
  - (5) 50 percent DTSC Fee \$ \_\_\_\_\_
- e. 50 percent Hazardous waste removal \$ \_\_\_\_\_
  - Response Action (RA)
- f. Site Development
  - 50 percent Service-Site \$ \_\_\_\_\_
  - 50 percent Off-Site \$ \_\_\_\_\_
  - 50 percent Utilities \$ \_\_\_\_\_
- g. Facility Hardship Section 1859.82(a) or (b)
  - Toilet (sq. ft.) \_\_\_\_\_
  - Other (sq. ft.) \_\_\_\_\_
- h. Replacement area
  - Toilet (sq. ft.) \_\_\_\_\_
  - Other (sq. ft.) \_\_\_\_\_
- i.  Energy Efficiency \_\_\_\_\_ %

**6. Modernization Additional Grant Request—Modernization Only**

- a.  Project Assistance \_\_\_\_\_ %
- b.  Energy Efficiency \_\_\_\_\_ %
- c.  Site Development—60 percent utilities \$ \_\_\_\_\_

**7. Excessive Cost Hardship Request**

**New Construction Only**

- Geographic Percent Factor \_\_\_\_\_ %
- New School Project [Section 1859.83(c)(1)] \_\_\_\_\_
- New School Project [Section 1859.83(c)(2)] \_\_\_\_\_
- Small Size Project \_\_\_\_\_
- Urban/Security/Impacted Site: \_\_\_\_\_  
 If a new site, \$ \_\_\_\_\_ per Useable Acre [Section 1859.83(d)(2)(C)]

**Modernization Only**

- Rehabilitation/Mitigation [Section 1859.83(e)] \$ \_\_\_\_\_
- Geographic Percent Factor \_\_\_\_\_ %
- Handicapped Access/Fire Code (3 percent) \_\_\_\_\_
- Number of 2-Stop Elevators \_\_\_\_\_
- Number of Additional Stops \_\_\_\_\_
- Small Size Project \_\_\_\_\_
- Urban/Security/Impacted site \_\_\_\_\_

**8. Project Priority Funding Order—New Construction Only**

Priority order of this application in relation to other new construction applications submitted by the district at the same time. # \_\_\_\_\_

- Project meets:
- Density requirement pursuant to Section 1859.92(c)(3).
  - Stock plans requirement pursuant to Section 1859.92(c)(4).
  - Energy efficiency requirement pursuant to Section 1859.92(c)(6).

**9. Prior Approval Under the LPP**

New Construction 22/ \_\_\_\_\_  
 Modernization 77/ \_\_\_\_\_

**10. Prior Apportionment Under the SFP**

Site Design—New Construction 50/ \_\_\_\_\_  
 Design—Modernization 57/ \_\_\_\_\_

11. a. Preliminary Apportionment Application Number # \_\_\_\_\_  
 b. Preliminary Charter School Apportionment Application Number # \_\_\_\_\_

**12. Alternative Developer Fee—New Construction Only**

Alternative developer fee collected and reportable pursuant to Regulation Section 1859.77. \$ \_\_\_\_\_

**13. Adjustment to Baseline Eligibility—New Construction Only**

- a. Additional Classroom(s) provided:
- |                              |            |       |
|------------------------------|------------|-------|
| <u>General Education</u>     | K-6        | _____ |
|                              | 7-8        | _____ |
|                              | 9-12       | _____ |
|                              | Non-Severe | _____ |
|                              | Severe     | _____ |
| <u>Alternative Education</u> | K-6        | _____ |
|                              | 7-8        | _____ |
|                              | 9-12       | _____ |
- b. Operational Grant (HSAA) only:
- |  |            |       |
|--|------------|-------|
|  | K-6        | _____ |
|  | 7-8        | _____ |
|  | 9-12       | _____ |
|  | Non-Severe | _____ |
|  | Severe     | _____ |

**14. Pending Reorganization Election—New Construction Only**  Yes  No

**15. Joint Use Facility/Leased Property**

- a.  Joint Use Facility
- b.  Leased Property

**16. Architect of Record or Licensed Architect Certification**

- I certify as the architect of record for the project or as a licensed architect that:
- The P&S for this project were submitted to the OPSC by electronic medium (i.e., CD-ROM, zip disk or diskette) or as an alternative, if the request is for a modernization Grant, the P&S were submitted in hard copy to the OPSC.
  - Any portion of the P&S requiring review and approval by the Division of the State Architect (DSA) were approved by the DSA on \_\_\_\_\_ (enter DSA approval date). (If the P&S were not approved by the DSA enter N/A.)
  - Any portion of the P&S not requiring review and approval by the DSA meets the requirements of the California Code of Regulations, Title 24, including any handicapped access and fire code requirements.
  - If the request is for a Modernization Grant, the P&S include the demolition of more classrooms than those to be constructed in the project, the difference is \_\_\_\_\_ classroom(s). (Indicate N/A if there are none.)
  - If the request is for a Modernization Grant, the P&S include the construction of more classrooms than those to be demolished in the project, the difference is \_\_\_\_\_ classroom(s). (Indicate N/A if there are none.)

ARCHITECT OF RECORD OR LICENSED ARCHITECT (PRINT NAME)	
SIGNATURE	DATE

**17. Architect of Record or Design Professional Certification**

- I certify as the architect of record for the project or the appropriate design professional, that:
- If the request is for a New Construction Grant, I have developed a cost estimate of the proposed project which indicates that the estimated construction cost of the work in the P&S including deferred items (if any) relating to the proposed project, 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 and is available at the district for review by the OPSC.
  - If the request is for a Modernization Grant, I have developed a cost estimate of the proposed project which indicates that the estimated construction cost of the work in the P&S, including deferred items and interim housing (if any) relating to the proposed project, is at least 60 percent of the total grant amount provided by the State and the district's matching share. This cost estimate does not include planning, tests, inspection or furniture and equipment and is available at the district for review by the OPSC.

ARCHITECT OF RECORD OR DESIGN PROFESSIONAL (PRINT NAME)	
SIGNATURE	DATE

**18. Certification**

I certify, as the District Representative, that the information reported on this form, with the exception of items 16 and 17, is true and correct and that:

I am an authorized representative of the district as authorized by the governing board of the district; and

- A resolution or other appropriate documentation supporting this application under Chapter 12.5, Part 10, Division 1, commencing with Section 17070.10, et. seq., of the Education Code was adopted by the School District's Governing Board or the designee of the Superintendent of Public Instruction on \_\_\_\_\_; and
- The district has established a "Restricted Maintenance Account" for exclusive purpose of providing ongoing and major maintenance of school buildings and has developed an ongoing and major maintenance plan that complies with and is implemented under the provisions of Education Code Section 17070.75 and 17070.77 (refer to Sections 1859.100 through 1859.102); and
- The district has considered the feasibility of the joint use of land and facilities with other governmental agencies in order to minimize school facility costs; and
- The district will comply with all laws pertaining to the construction or modernization of its school building; and
- Facilities to be modernized have not been previously modernized with Lease-Purchase Program, Proposition 1A Funds or School Facility Program state funds; and
- All contracts entered on or after November 4, 1998 for the service of any architect structural engineer or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5, of Title 1, of the Government Code; and
- If this request is for new construction funding, the district has received approval of the site and the plans from the CDE. Plan approval is not required if request is for separate design apportionment; and
- If this request is for modernization funding, the district has received approval of the plans for the project from the CDE. Plan approval is not required if request is for separate design apportionment; and
- The district has or will comply with the Public Contract Code regarding all laws governing the use of force account labor; and
- This district has or will comply with Education Code Section 17076.11 regarding at least a 3 percent expenditure goal for disabled veteran business enterprises; and
- The district matching funds required pursuant to Sections 1859.77.1 or 1859.79 has either been expended by the district, deposited in the County School Facility Fund or will be expended by the district prior to the notice of completion for the project; and
- The district has received the necessary approval of the plans and specifications from the Division of the State Architect unless the request is for a separate site and/or design apportionment; and
- If the district is requesting site acquisition funds as part of this application, the district has complied with Sections 1859.74 through 1859.75.1 as appropriate; and
- With the exception of an apportionment made pursuant to Section 1859.75.1, the district understands that the lack of substantial progress toward increasing the pupil capacity or renovation of its facilities within 18 months of receipt of any funding shall be cause for the rescission of the unexpended funds (refer to Section 1859.105); and
- If the apportionment for this project was made pursuant to Section 1859.75.1, the district understands that the lack of substantial progress toward increasing the pupil capacity or renovation of its facilities within 12 months of receipt of any funding shall be cause for the rescission of the unexpended funds (refer to Section 1859.105.1); and
- The district understands that funds not released within 18 months of apportionment shall be rescinded and the application shall be denied (refer to Section 1859.90); and
- The statements set forth in this application and supporting documents are true and correct to the best of my knowledge and belief; and

- All school facilities purchased or newly constructed under the project for use by pupils who are individuals with exceptional needs, as defined in Education Code Section 56026, shall be designed and located on the school site so as to maximize interaction between those individuals with exceptional needs and other pupils as appropriate to the needs of both; and
- This form is an exact duplicate (verbatim) of the form provided by the OPSC. In the event a conflict should exist, the language in the OPSC form will prevail; and
- The district understands that some or all of the State funding for the project must be returned to the State as a result of an audit pursuant to Sections 1859.105, 1859.105.1, 1859.106; and
- The district has complied with the provisions of Sections 1859.76 and 1859.79.2 and that the portion of the project funded by the State does not contain work specifically prohibited in those Sections; and
- If the SFP grants will be used for the construction or modernization of school facilities on leased land the district has entered into a lease agreement for the leased property that meets the requirements of Section 1859.22; and
- If the application contains a "Use of New Construction Grant" request, the district has adopted a school board resolution and housing plan at a public hearing at a regularly scheduled meeting of the governing board on \_\_\_\_\_ as specified in Sections 1859.77.2, or 1859.77.3, as appropriate. The district's approved housing plan is as indicated (check all that apply):
  - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB and the district must identify the source of the funds. [Applicable for Sections 1859.77.2(a) and (b) and 1859.77.3(a) and (b)]
  - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom. [Applicable for Sections 1859.77.2(a) and (b) and 1859.77.3(a) and (b)]
  - 3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project. [Applicable for Sections 1859.77.2(b) and 1859.77.3(b)]
- If the district requested additional funding for fire code requirements pursuant to Sections 1859.71.2 or 1859.78.4, the district will include the automatic fire detection/alarm system and/or automatic sprinkler system in the project prior to completion of the project; and
- If this request is for a Large New Construction Project or a Large Modernization Project, the district has consulted with the career technical advisory committee established pursuant to Education Code Section 8070 and it has considered the need for vocational and career technical facilities to adequately meet its program needs in accordance with Education Code Sections 51224, 51225.3(b) and 52336.1; and
- If the district is requesting an Additional Grant for Energy Efficiency pursuant to Sections 1859.71.3 or 1859.78.5, the increased costs for the energy efficiency components in the project exceeds the amount of funding otherwise available to the district; and
- The district has or will initiate and enforce a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project is funded from Proposition 47 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003; and
- If this application is submitted after January 1, 2004 for modernization funding, the district has considered the potential for the presence of lead-containing materials in the modernization project and will follow all relevant federal, state, and local standards for the management of any identified lead.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
August 1, 2003

**SENATE BILL 575 SURVEY**  
**Automatic Fire Detection /Alarm  
and Automatic Sprinkler Requirement**

**BACKGROUND**

Senate Bill (SB) 575, Chapter 725, Statutes of 2001 requires all school district plans for new construction and modernization submitted to the Division of the State Architect (DSA) and requesting funding under the School Facility Program (SFP) on or after July 1, 2002 to include automated fire detection, alarm, and in certain types of construction, a sprinkler system. In addition, this law required the State Allocation Board (SAB) to modify the existing grants for new construction and modernization to cover the costs associated with the purchase and installation of an automatic fire detection alarm and/or sprinkler system. The SAB adopted regulations in June 2002 to include an increase to the per pupil grants for these costs.

A provision in SB 575 requires the SAB to review the adequacy of the per pupil grant adjustments and determine if these adjustments are sufficient. The SAB is required to perform this review prior to July 1, 2003.

**INITIAL GRANT CREATION**

Since SB 575 required the SAB to adjust the per pupil grant amounts for new construction and modernization to cover the increased costs of installing these systems, the Office of Public School Construction (OPSC) was faced with the difficult task of locating resources that could assist in creating the grant adjustments. The OPSC solicited data at two SAB Implementation Committee meetings for this purpose and contacted the DSA and the Office of the State Fire Marshall (OSFM) to request information and resources. The OSFM and the DSA provided the OPSC with several sources, which enabled access to the data needed. The OPSC utilized these sources to create the initial per pupil grant for new construction and modernization.

A factor that influenced the decision to create the per pupil grants with limited information was the timeline for the implementation of this law. The California Building Standards Commission adopted the OSFM's regulations on an emergency basis; therefore, the regulations would require the DSA and the SAB to implement SB 575 on July 1, 2002.

**SUMMARY OF SURVEY RESULTS**

To assist the OPSC in conducting a meaningful review of the adequacy of the per pupil grants, the OPSC mailed a survey to all districts that received funding under these new fire code provisions. A total of nearly 100 surveys were sent out with 49 responses received (20 new construction and 29 modernization projects). Included with the survey the districts submitted either a detailed cost breakdown, such as a contractor bid, or schedule of values. The districts that responded to the survey represent northern, central, and southern areas of California, as well as suburban, urban and rural.

SUMMARY OF SURVEY RESULTS (cont.)

Today we are discussing the results of the survey, and our recommendations which are outlined in the below chart:

New Construction (Additions to an existing site):

<i>Description</i>	<i>Current Per Pupil Grant * @ 50% State Share</i>	<i>Per Pupil Grant Based on Survey @ 50% State Share</i>	<i>Recommended Per Pupil Grant** @50% State Share</i>
Alarm/Detection – Elementary	\$30.00	\$6.35	\$8.00
Alarm/Detection – Middle	\$39.00	\$9.75	\$11.00
Alarm/Detection – High	\$29.00	\$16.50	\$18.00

New Construction (New School / New Campus):

<i>Description</i>		<i>Current Per Pupil Grant * @ 50% State Share</i>		<i>Per Pupil Grant Based on Survey @ 50% State Share</i>		<i>Recommended Per Pupil Grant** @50% State Share</i>	
		<i>Grant \$</i>	<i>Combined Total</i>	<i>Grant \$</i>	<i>Combined Total</i>	<i>Grant \$</i>	<i>Combined Total</i>
<i>Elementary</i>	Alarm/Detection	\$30.00	\$124.00	\$6.35	\$111.08	\$8.00	\$119.00
	Sprinkler	\$94.00		\$104.73		\$111.00	
<i>Middle</i>	Alarm/Detection	\$39.00	\$151.00	\$9.75	\$132.58	\$11.00	\$143.00
	Sprinkler	\$112.00		\$122.83		\$132.00	
<i>High School</i>	Alarm/Detection	\$29.00	\$156.00	\$16.50	\$146.50	\$18.00	\$155.00
	Sprinkler	\$127.00		\$130.00		\$137.00	

Modernization:

<i>Description</i>	<i>Current Per Pupil Grant * @ 80% State Share</i>	<i>Per Pupil Grant Based on Survey @ 80% State Share</i>	<i>Recommended Per Pupil Grant** @80% State Share</i>
Alarm/Detection – Elementary	\$118.00	\$76.68	\$81.00
Alarm/Detection – Middle	\$146.00	\$76.72	\$81.00
Alarm/Detection – High	\$143.00	\$72.80	\$81.00

\* This per pupil grant amount is representative of the current grant amount based on the January 1, 2003 Index.

\*\* These per pupil grant amounts will be shown in regulations at the 1998 index amount to coincide with other grants provided in the regulations.

## SUMMARY OF SURVEY RESULTS (cont.)

The survey results show that some costs were under-funded and others were over-funded. As a result, the OPSC is recommending that the per pupil grant amounts be adjusted accordingly to reflect the actual costs. The initial per pupil grant developed for new construction projects that contain or require automatic sprinkler systems is inadequate; therefore, the OPSC is recommending that these costs be increased to reflect the actual costs. The initial new construction and modernization per pupil amount for fire alarm/detection is excessive, and the OPSC is recommending that the per pupil grant be reduced. The average for the actual project costs from the survey results is the basis of our recommended amounts. These amounts include consideration for soft costs.

### *Special Day Class Pupils*

The initial per pupil grant adjustments for SDC pupils was created by increasing the SDC grants proportionately from the base grant to the SDC base grant. The survey results did not delineate whether the project contained SDC pupils; therefore, the OPSC has no data to support if the grants are sufficient or not. However, we recommend adjustment of the SDC per pupil grants accordingly to be consistent with the recommended amounts in this item.

### *Other*

The grants provided for toilet and therapy area in new construction projects and for current replacement costs of toilet and therapy area include a small amount for the cost of automatic fire detection and alarm systems and automatic sprinkler systems. In accordance with the survey results, the decrease in the funding provided for these systems would be minimal; therefore, the OPSC recommends no change to the grant amounts.

## RECOMMENDATIONS

1. Adjust the current per pupil new construction and modernization grants for fire alarm/detection system based upon the based upon the recommended per pupil grant amount indicated in the chart above.
2. Adjust the current per pupil new construction grant for automatic fire alarm and sprinkler system recommended per pupil grant amount indicated the chart above.
3. Adjust the Special Day Class per pupil grants based upon the adjustment to the new construction and modernization grants recommended above.
4. Present to the SAB the proposed amended SFP Regulations as shown on Attachment A.
5. Present to the SAB the proposed 2003 adjustments to the SFP Regulations as shown on Attachment B.

## ATTACHMENT A

### Proposed Amended Regulations Automatic Fire Detection /Alarm and Automatic Sprinkler Requirement

Amend Section 1859.71.2 as follows:

Section 1859.71.2. New Construction Additional Grant for Fire Code Requirements.

- (a) In addition to any other funding authorized by these Regulations, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52:
- (1) ~~\$26.82~~ \$7.12 for each elementary school pupil.
  - (2) ~~\$33.65~~ \$9.79 for each middle school pupil
  - (3) ~~\$25.94~~ \$16.03 for each high school pupil.
  - (4) ~~\$80.06~~ \$20.42 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (5) ~~\$53.57~~ \$30.41 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) In addition to the funding provided by Subdivision (a) of Education Code Section 17072.10 and Section 1859.71.1, the Board shall provide the following grant amounts for each pupil included in an application for new construction if the project includes an automated sprinkler system as required in Education Code Section 17074.52:
- (1) ~~\$83.67~~ \$98.83 for each elementary school pupil.
  - (2) ~~\$99.01~~ \$117.53 for each middle school pupil.
  - (3) ~~\$112.84~~ \$121.98 for each high school pupil.
  - (4) ~~\$273.86~~ \$209.77 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (5) ~~\$183.23~~ \$312.40 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (c) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) and (b) above if applicable, in addition to any other funding authorized by these Regulations, for each pupil included in an application for new construction if all the following criteria are met:
- (1) The final plans for the new construction project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.
  - (2) The final plans for the new construction project included an automatic fire detection and alarm system and/or an automatic sprinkler system as described in Education Code Section 17074.52 or the project will include the system(s) prior to the completion of the project.
  - (3) The new construction project did not receive the entire New Construction Adjusted Grant apportionment by June 30, 2002.

The amounts shown in (a) and (b) above shall be adjusted annually in the manner prescribed in Section 1859.71.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17074.50, 17074.52, 17074.54 and 17074.56, Education Code.

Amend Section 1859.78.4 as follows:

Section 1859.78.4. Modernization Additional Grant for Fire Code Requirements.

- (a) In addition to any other funding authorized by these Regulations, the Board shall provide the following grant amounts for each pupil included in an application for modernization if the project includes an automatic fire detection and alarm system as described in Education Code Section 17074.52 or the fire detection and alarm system is deferred as authorized by Subdivision (b) of Education Code Section 17074.50:

- (1) ~~\$104.93~~ \$72.12 for each elementary pupil.
- (2) ~~\$129.95~~ \$72.12 for each middle school pupil.
- (3) ~~\$127.40~~ \$72.12 for each high school pupil.
- (4) ~~\$335.71~~ \$134.14 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (5) ~~\$224.61~~ \$200.49 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) Pursuant to Subdivision (c) of Education Code Section 17074.56, the Board shall provide the grant amounts shown in (a) above, in addition to any other funding authorized by these Regulations, for each pupil included in an application for modernization if *all* the following criteria are met:
  - (1) The final plans for the modernization project were submitted to the Division of the State Architect for review and approval between September 1, 2001 and June 30, 2002.
  - (2) The final plans for the modernization project included an automatic fire detection and alarm system as described in Education Code Section 17074.52 or the project will include the system prior to the completion of the project.
  - (3) The modernization project did not receive the entire modernization Adjusted Grant apportionment by June 30, 2002.

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

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17074.50, 17074.52, 17074.54 and 17074.56, Education Code

**ATTACHMENT B**

Proposed 1998 and 2003 Grant Amount Adjustments  
Automatic Fire Detection /Alarm  
and Automatic Sprinkler Requirement

		1998 Additional Grant	Additional Grant Effective 1-1-03
<b>New Construction</b>	Auto Alarm/Detection – Elementary	\$7.12	\$8.00
	Auto Alarm/Detection – Middle	\$9.79	\$11.00
	Auto Alarm/Detection – High	\$16.03	\$18.00
	Auto Alarm/Detection – Special Day Class – Non-Severe	\$20.42	\$ 23.00
	Auto Alarm/Detection – Special Day Class – Severe	\$30.41	\$ 34.00
	Sprinkler – Elementary	\$98.83	\$111.00
	Sprinkler – Middle	\$117.53	\$132.00
	Sprinkler – High	\$121.98	\$137.00
	Sprinkler – Special Day Class – Non-Severe	\$209.77	\$236.00
	Sprinkler – Special Day Class – Severe	\$312.40	\$351.00
<b>Modernization</b>			
<b>Modernization</b>	Auto Alarm/Detection – Elementary	\$72.12	\$81.00
	Auto Alarm/Detection – Middle	\$72.12	\$81.00
	Auto Alarm/Detection – High	\$72.12	\$81.00
	Auto Alarm/Detection – Special Day Class – Non-Severe	\$134.14	\$151.00
	Auto Alarm/Detection – Special Day Class – Severe	\$200.49	\$225.00

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
August 1, 2003

**LEASE LEASE-BACK AGREEMENTS**

This matter is being presented to the State Allocation Board for two purposes:

- Advise the SAB that projects constructed under lease Lease-back agreements are being recommended for reimbursement and to obtain SAB concurrence that that is a permissible use of state bond funds, and
- Propose amendments to current regulations necessary to clarify requirements for funding particular to lease lease-back arrangements.

**Background**

*The Use of Education Code Section 17406 (Lease Lease-Back) as a contracting method.*

Education Code Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

**OPSC Policy Positions**

Over a period of several years, the OPSC has responded to individual school district questions on issues related to the use of the provisions of EC 17406. These responses have begun to form the office's informal policy on lease lease-back project delivery methods. The responses are summarized below by general topic:

- The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- The lease agreement must contain the following provisions or information:
  - The value of the lease.
  - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
  - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- State bond funds may not be used to make lease or rental payments.

Staff believes that these policies need to be approved by the Board and formalized through the regulatory process.

## Discussion

- Should the ability to file a lease, lease-back application under the provisions of EC 17406 also be extended to modernization applications?
- Is there a standard that can be used for when a school is occupied (documents filed by the district/school board minutes, etc)?

## Proposal

Clarify that lease lease-back agreements meeting the requirements of EC 17406 may be used as a means of constructing or **modernizing** school facilities otherwise eligible under the SFP. Add regulation section 1859.23 as follows:

### 1859.23 SFP Application for Funding of Property Leased Under the Provisions of Education Code Section 17406.

In addition to meeting the requirements of Sections 1859.20 and 1859.21 or 1859.120, a district may receive SFP funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided the following are met:

- (a) At the time the funding application is approved by the Board, the district has title to the site or meets one of the following:
- (1) the site acquisition is in final escrow,
  - (2) the district is leasing the site for a term specified in 1859.22 (b), (1), (2) or (3) and the property lease is not connected to or a part of the lease, lease-back agreement created under EC 17406.
  - (3) the district has filed an action in eminent domain and has received and order of immediate possession of the site.
- (b) A provision that the lease agreement contains a purchase option that, if exercised, the lease shall terminate and the title of the improvements shall vest with the district within 180 days of receiving an adjusted grant apportionment from the Board or occupancy of the project, whichever is later.
- (c) The Application for Funding is filed with the Board no later than occupancy by the district of any part of the project.
- (d) No funds from state bonds are used for lease or rental payments on the project.
- (e) All requirements of Chapter 12.5 have been met including but not limited to compliance with SFP Regulation Section (XXXXX Note: Insert new section number regarding "chargeability of district funded facilities") and Labor Code Section 1771.7.

## Recommendations

1. Present to the SAB the proposed SFP Regulation as shown above.
2. Present to the SAB the proposed amendments to Form SAB 50-05, as shown on Attachment A.

ATTACHMENT A

Form SAB 50-05  
See Insert Separate Attachment

## ATTACHMENT B

### Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as

contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**FUND RELEASE AUTHORIZATION**

## SCHOOL FACILITY PROGRAM

SAB 50-05 (REV 02/08/03)

**GENERAL INSTRUCTIONS – (refer to Title 2, California Code of Regulations Sections 1859.90 and 1859.91)**

After a School Facility Program (SFP) grant has been funded by the Board, the Office of Public School Construction (OPSC) will release the apportioned funds with the exception of design funds, to the appropriate county treasury once the district has completed and submitted this form to the OPSC. Design funds will automatically be released to the district within 30 days of the apportionment, with the exception of Preliminary Apportionments.

- Check the boxes in Part I if the district has current financial hardship status pursuant to Section 1859.81 and is requesting release of Preliminary Apportionment funds for design, engineering, and other preconstruction project costs. Attach to this form the CDE Letter pursuant to Section 1859.149(a)(2).
- Check the box in Part II, for release of a separate site apportionment provided pursuant to Sections 1859.74.4, 1859.75.1 or 1859.81.1 or for release of Preliminary Apportionment site only acquisition pursuant to 1859.153(b) or (c).
- Check the box(es) in Part III for release of new construction or modernization funds.
- Check the boxes in Part IV if the district is requesting a separate release of site acquisition funds as part of a new construction project.
- Check the boxes in Part V if the district is requesting release of Joint-Use Project funds.
- Check the appropriate box(es) in Part VI that identify the district funding sources that have or will be used for the district's share of the project.

DRAFT

SCHOOL DISTRICT	APPLICATION NUMBER
SCHOOL NAME	FIVE-DIGIT DISTRICT CODE NUMBER (SEE CALIFORNIA PUBLIC SCHOOL DIRECTORY)
COUNTY	HIGH SCHOOL ATTENDANCE AREA (HSAA) (IF APPLICABLE)

**Part I—Preliminary Apportionment—Design Only**

- The district certifies it has complied with Section 1859.149(a).
- The district certifies that its applicable matching share has either:
  - been deposited in the County School Facility Fund
  - has already been expended by the district for the project
  - will be expended by the district prior to the Notice of Completion for the project
- The district certifies that it currently has Financial Hardship status under the provisions of Section 1859.81.

**Part II—Separate Site Apportionment**

- RA on additions to existing school sites pursuant to Section 1859.74.4.

Pursuant to Sections 1859.75.1 or 1859.81.1, district must be able to check both boxes.

- Release site acquisition funds. The district certifies the funds are needed to place on deposit in order to secure the site acquisition.
- The district certifies that its applicable matching share has either:
  - been deposited in the County School Facility Fund
  - has already been expended by the district for the project
  - will be expended by the district prior to the Notice of Completion for the project

**Part III—New Construction/Modernization**

District must be able to check both all boxes.

- The district certifies that its applicable matching share has either:
  - been deposited in the County School Facility Fund
  - has already been expended by the district for the project
  - will be expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) or lease-purchase or lease, lease-back agreement for at least 50 percent of the construction included in the plans applicable to the state funded project, and has issued the Notice to Proceed for that contract.
- The Notice to Proceed for the construction contract for this project has been issued.

The amount of State funds released for new construction shall be 100 percent of the total SFP New Construction Adjusted Grant, less any site acquisition funds previously released in Part III.

The amount of State funds released for modernization shall be 100 percent of the SFP Modernization Adjusted Grant.

**Part IV—New Construction—Site Acquisition Only**

District must be able to check both boxes.

- The district certifies it has entered escrow for the site (attach copy of escrow instructions).
- The district certifies that its applicable matching share has either:
  - been deposited in the County School Facility Fund
  - has already been expended by the district for the project
  - will be expended by the district prior to the Notice of Completion for the project

The amount of State funds released shall be equal to the additional grant provided for site acquisition.

**Part V—Joint-Use Projects**

- The district certifies that the Joint-Use Partners' financial contribution has either:
  - been received and deposited in the County School Facility Fund
  - has been received and expended by the district
  - will be received and expended by the district prior to the Notice of Completion for the project
- The district certifies it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project.

The amount of State funds released for new construction shall be 100 percent of the Joint-Use Grant.

**Part VI—Identify District and Joint-Use Partners' Funding Sources**

- Available bond funds such as general obligation, or Mello-Roos.
- Available developer fees, proceeds from the sale of surplus property, or federal grants.
- Other funds available (identify)
- Funds already expended by the district for the project.
- Funds already expended by the Joint-Use Partners for the project.
- Future revenue sources to be used for the project (identify)

I certify, as the District Representative, that the information reported on this form is true and correct and that:

- The site where buildings will be modernized must comply with Education Code Sections 17212, 17212.5, and 17213; and,
- The grant amount provided by the State, combined with local matching funds or the Joint-Use Partner's financial contribution, are sufficient to complete the school construction project, unless the request is for a separate site and/or design apportionment; and,
- The district has or will comply with the Public Contract Code regarding all laws governing the use of force account labor.
- This project for which the grant amount is provided complies with Education Code Sections 17070.50 and 17072.30.
- The district or charter school has initiated and enforced a Labor Compliance Program that has been approved by the Department of Industrial Relations, pursuant to Labor Code Section 1771.7, if the project was funded from Proposition 47 and the Notice to Proceed for the construction phase of the project is issued on or after April 1, 2003.
- This form is an exact duplicate (verbatim) of the form provided by the Office of Public School Construction (OPSC). In the event a conflict should exist, then the language in the OPSC form will prevail.

SIGNATURE OF DISTRICT REPRESENTATIVE	DATE
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DRAFT

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
August 1, 2003

DISTRICT FUNDED FACILITIES  
INCLUDED IN EXISTING SCHOOL BUILDING CAPACITY

**BACKGROUND**

After a one-time calculation of existing school building capacity, known as the 'baseline', is made, the Education Code provides that it shall be adjusted by the "...number of pupils for which facilities were provided from any state or local funding source after the existing school building capacity was determined..." (EC 17071.75 (b))

State Allocation Board regulation 1859.51 (i) implements this section of law by saying that the district's baseline eligibility shall be reduced "...by the number of pupils housed ... in any classroom provided after the baseline eligibility was determined..." An exception is made for classrooms where the contract for the lease, lease-purchase, purchase or construction was made no more than 180 days prior to the submission of an approvable application. In other words, under current law and regulation, a district must file an application for funding of a facility no later than 180 days after signing a contract for building or leasing a facility. If the district does not do so, the classrooms become a part of the district's existing school building capacity, thus reducing the district's eligibility for funding and precluding reimbursement of the costs for the project.

**DISCUSSION**

The direction in the law that regardless of the source of funding any classroom is counted in the district's school building capacity is clear. However, the law leaves it to the SAB to determine when a classroom is 'provided.' The current regulation essentially uses the date of the signing of a contract for the lease or construction as the milestone, but provides a 180 day grace period for the district to file an approvable application for funding. This option may not accommodate all circumstances:

- ❑ Design-build or lease / lease- back situations. In these cases, the initial design build or lease / lease-back agreement may precede the signing of a construction contract by a considerable time. It may not be possible to file an application for funding within 180 days because plan and site approvals may not be in place.
- ❑ A few districts, unaware of the requirement to file within 6 months, have inadvertently lost eligibility for reimbursement.
- ❑ Some districts have proceeded with construction without certain required approvals in place. For this reason, the districts are unable to file approvable applications and lose eligibility for reimbursement.

## **OPTIONS**

There are several possibilities to determine when a classroom should be considered available and therefore included in the district's existing school building capacity. A few options are as follows:

1. 180 days after the contract for the lease, lease-purchase, purchase or construction is signed. (Current regulation)

As already discussed, this option does not easily accommodate design-build projects and does not address lease / lease-back projects constructed under EC 17406.

2. When the contract for the lease, lease-purchase, purchase or construction is signed.

Same problem as #1.

3. When a Notice of Completion for the classroom is recorded.

A NOC may not be filed promptly for a variety of reasons, including legal issues. Therefore it is not a good indicator of when a classroom is 'provided' to the district.

4. When the classroom is occupied.

This option has a number of problems of interpretation. However, it most closely identifies the point in time when the classroom is 'provided' and is in use by the district.

Any option selected must ensure that the State bond funds are used to provide needed classrooms not already existing or to reimburse the State's share of the cost of classrooms constructed in anticipation of State funding.

## **PROPOSAL**

### **Basic Rule:**

All classrooms for which a contract for the lease, lease/lease-back, lease-purchase, purchase or construction shall be included in the district's existing school building capacity as of the date of occupancy of any portion of the project. If a district wishes to seek funding under the School Facility Program (SFP) for that project, it must file a complete application for funding with the Office of Public School Construction prior to the date of occupancy of any portion of the project. After the date of occupancy, a district will be ineligible to seek reimbursement under the SFP for that project.

### Grandfathering:

For projects not previously State funded, the district may request funding for the project (classrooms) under the following circumstances:

1. The complete application for funding must be filed with the Office of Public School Construction no later than 90 days after this proposed regulation is in effect; and,
2. The funding application meets all requirements of Chapter 12.5; and,
3. The contract for the lease, lease-purchase, purchase or construction has been signed on or after January 1, 2000; and,
4. The grants for the project funded as described in this grandfathering proposal shall be limited to actual eligible expenditures, not to exceed the amount of SFP funding calculated at the time the contract was originally signed; and,
5. The district has new construction eligibility for the project. If the capacity of the project is included in the district's baseline, the district may exclude the capacity from its existing school building capacity for purposes of determining eligibility for this project; and,
6. All project approvals required for a new construction funding application were obtained prior to the contract date; and,
7. If the application for funding meets all criteria except #6, the district may request a special case-by-case approval by the SAB. The district must show evidence that, at the time the contract was signed, it had been the district's intention to seek State funding for the project.

Previously in the first occasions of projects submitting an application outside of the "180 days", a small number of projects received a SFP approval by accepting a second reduction of pupils from its eligibility. Subject to the SAB approval of this proposal, staff recommends that an opportunity to correct the second reduction be provided to those districts if the district meets the grandfathering provisions above.

### **RECOMMENDATION**

Present to the SAB proposed amended SFP Regulations as outlined above.

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
August 1, 2003

**BOND ACCOUNTABILITY**

**BACKGROUND**

Based on concerns expressed over a school district placing funds received from the State Allocation Board (SAB) directly into the District's General Fund without reimbursing the Restricted County School Facilities Fund, the Office of Public School Construction (OPSC) requested an opinion from the Attorney General (AG). As a part of that specific question, the AG was asked to consider the position by the OPSC/SAB that reimbursement of eligible project expenditures satisfies all legal requirements pertaining to the use of State bond funds. The AG was also asked to clarify the position by the OPSC/SAB that once reimbursement of eligible project expenditures occurs, the funding loses its identity as State bond funds and is no longer under the control or authority of the SAB.

The AG opined that the OPSC/SAB positions met the requirements of State law but indicated concern that the transfer of State bond money directly into a district's General Fund, without proper documentation, could violate the intent of the local and State bond funds. Based on this concern, the AG recommended that current SFP regulations be amended to clarify accounting responsibilities and to seek advice of tax counsel.

The OPSC subsequently hired an independent tax counsel to review a proposed "bond accountability" regulation, existing law and SFP regulations to ensure that the tax-exempt status of the State and local bonds is not jeopardized.

**DISCUSSION**

The primary bond accountability issue is created by school districts that utilize local bonds to pay for the local and State project funding shares and do not refund the local bond for the State's share when State funding is provided to the district. This type of scenario may have tax-exempt implications for both the State and local bonds. Based on discussions with the independent tax counsel, her primary concerns relate to the aforementioned issue and ensuring that State and local money is not doubled up on the same expenditure and ultimately transferring State bond money to non facility related (operational) funds. A draft regulation is currently under review that will endeavor to address both of these issues. When the regulation has been finalized it will be presented to the SAB Implementation Committee for further discussion.

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**STATE ALLOCATION BOARD**

1130 K Street, Suite 400

Sacramento, CA 95814

<http://www.dgs.ca.gov/opsc>



**State Allocation Board  
IMPLEMENTATION COMMITTEE  
PENDING ITEMS LIST**

**August 1, 2003**

**A. FUTURE ITEMS**

- Best Practices

**B. SUSPENDED ITEMS**

- No items at this time

**STATE ALLOCATION BOARD**

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



**Date:** September 22, 2003

**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 Friday, October 3, 2003 (9:30 am - 3:30 pm) at 1500 Capitol Ave., in conference room(s) 72.148C and 72.149B (Sacramento, CA).

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. 2004 Meeting Schedule
3. Bond Accountability  
*A discussion of the obligations related to the proper use of state bond funds*
4. Best Practices  
*Discuss possible means of standardizing and incentivizing certain cost reduction practices*
5. Charter School Facilities Program (SB 15)  
*Amendments to the charter school funding program including caps on the amount of project funding*

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

State Allocation Board  
Implementation Committee  
October 3, 2003

**2004 IMPLEMENTATION COMMITTEE MEETING DATES**

DISCUSSION

At its August 1, 2003 meeting, the Implementation Committee requested that the Committee meeting dates for 2004 be established. (The 12 monthly calendars for 2004 will be provided for your reference at the meeting on October 3.)

Suggested Meeting Dates:

- Friday, January 9, 2004
- Friday, February 6, 2004
- Friday, March 5, 2004
- Friday, April 2, 2004
- Friday, May 7, 2004
- Friday, June 4, 2004
- Friday, July 9, 2004
- Friday, August 6, 2004
- Thursday, September 2, 2004 or Friday, September 3, 2004
- Friday, October 1, 2004
- Friday, November 5, 2004
- Friday, December 3, 2004

In light of the State's budget and the impact to State employees' ability to travel, all of the meetings will be held in Sacramento.

State Allocation Board  
Implementation Committee  
October 3, 2003

BOND ACCOUNTABILITY

BACKGROUND

Concerns have recently been expressed over a school district placing funds received from the State Allocation Board (SAB) directly into the District's General Fund without reimbursing its Capital Project Fund if that was the original source of the project expenditure. In response to the concern, the SAB directed the Office of Public School Construction (OPSC) to request an opinion from the Attorney General (AG) regarding this issue. As a part of that specific question, the AG was asked to consider the position by the OPSC/SAB that reimbursement of eligible project expenditures satisfies all legal requirements pertaining to the use of State bond funds. The AG was also asked to clarify the position by the OPSC/SAB that once reimbursement of eligible project expenditures occurs, the funding loses its identity as State bond funds and is no longer under the control or authority of the SAB.

The AG opined that the OPSC/SAB positions met the requirements of State law but indicated concern that the transfer of State bond money directly into a district's General Fund, when the project costs were initially funded by local bond funds, could violate the intent of the local and State bond funds. Based on this concern, the AG recommended that current SFP regulations be amended to clarify accounting responsibilities and to seek advice of tax counsel.

The OPSC subsequently hired an independent tax counsel to review a proposed "bond accountability" regulation, existing law and SFP regulations to ensure that the tax-exempt status of the State and local bonds is not jeopardized.

DISCUSSION

The primary bond accountability issue is created by school districts that utilize local bonds to pay for the local and State project funding shares and do not refund the local bond for the State's share when State funding is provided to the district. Utilizing State funds for General Fund operational purposes and not refunding that share of local bonds utilized to meet the State's share could jeopardize the tax-exempt status of both the State and local bonds. Furthermore, another concern relates to situations where the district's Capitol Project Fund is reimbursed for the State's share of eligible expenditures and the amount of the duplicated reimbursement expenditure funding is transferred out of the Capital Project Fund for other uses. This is problematic since the funding was previously made from the Capitol Project Fund utilizing local funding and upon reimbursement with State funding the duplicate monies should remain in that fund for other authorized purposes pursuant to the California School Accounting Manual.

The attached regulation has been reviewed and approved by the AG's office and the independent tax counsel. This regulation will essentially:

- Clarify how State bond funds are to be used in reimbursement of the State's share on locally funded projects.
- Provide direction relative to the type of substantiating evidence that will be necessary during an audit to demonstrate appropriate use of State bond funds.
- Specify that school districts unable to conform to this regulation may be subject to material inaccuracy provisions.

## RECOMMENDATION

Present to the SAB the proposed bond accounting regulations.

### 1859.90.1 Local Bond Reimbursement Fund Releases.

School districts that utilized local bonds to pay for eligible project costs shall be eligible for reimbursement of the state's share of the project when the state funds are allocated to a project for costs already paid with local bond funds shall be used as follows:

- a) To the cost of retiring the local bonds; or
- b) To capital expenditures of the district that are consistent with the Leroy F. Greene School Facilities Act that have not otherwise been financed from the proceeds of another state or local bond.

In accordance with Section 1859.106, school districts should be prepared to provide evidence of the amount and source or type of other bond funds used for the project and the other capital expenditures that will be reimbursed with the state apportionment, in the event the state apportionment will not be used for the SAB approved project or to retire local bonds.

Any school district that uses an allocation in a manner that is inconsistent with this provision shall be subject to the provisions prescribed in Sections 1859.104.1, 1859.104.2, and 1859.104.3.

### Revisions to the SAB 50-05:

Include an additional certification that the state apportionment will be used in accordance with requirements of Section 1859.90.1.

## BEST PRACTICES

### BACKGROUND

The Office of Public School Construction (OPSC) presented the Best Practices Report to the State Allocation Board (SAB) at its March 2003 meeting. The report, developed by the OPSC, is comprised of a compilation of methods and best practices for school facility construction. It is a comprehensive source of information covering all aspects of a school construction project, and serves as an invaluable tool in providing cost reduction guidelines. Realizing the importance of the cost and time saving measures outlined in the report, particularly with respect to the reuse of plans, the Board requested that staff and the Implementation Committee look for possible means of standardizing and incentivizing certain cost reduction practices. Furthermore, the Board requested that a system of recognition be developed for those districts currently utilizing these practices.

### DISCUSSION

Given California's current economic climate and the resultant budgetary constraints presently affecting all school districts, the impetus to implement cost saving measures is self evident. In and of itself, the inherent cost savings resulting from the utilization of best practices is its own incentive. Past funding programs such as the Lease-Purchase Program (LPP), contrary to the SFP, restricted a district's ability to manage its construction projects. With the inception of the SFP, districts were allowed the autonomy to administer their construction projects. The Best Practices Report provides an invaluable educational and practical resource tool that ultimately equates to cost savings. As such, it bridges the resource gap for districts that have neither the expertise nor the staff to manage their projects. It is the goal and the fiscal responsibility of the OPSC to enhance its ongoing widespread campaign to educate districts as to the benefits contained in the report. Our discussion then is:

- How can this be accomplished?
- How can we expand all efforts made thus far to promote and direct districts to use this report, which would be a win-win situation for all?

Current means by which the OPSC reaches its school district audience include:

- Ongoing articles in its "Advisory Newsletter" in order to educate districts about the advantages of using such methods as reuse of plans and prototype schools. The articles have featured specific schools that have utilized these methods to maximize efficiency and cost savings.
- Providing the Best Practices Report on its website, [www.dgs.ca.gov/opsc](http://www.dgs.ca.gov/opsc).
- An outreach program whereby project managers regularly visit school districts in order to provide consultation on all aspects of planning, including the usage of best practice methods.

- Collaborative efforts with the DSA and CASH to promote utilization of best practices. These efforts include:
  - Articles in *Breaking Ground*, a joint publication of the OPSC and DSA which serves to provide information on a variety of methods and best practices of school facility construction.
  - Working with CASH to develop a broad-reaching district survey for purposes of determining the frequency and advantages of the use of various best practice methods, with a focus on the reuse of plans and prototype schools.

STAFF COMMENTS

The inherent cost savings is the most compelling argument in favor of the utilization of the Best Practices Report. Since the SFP allows districts to expend any incurred savings not needed for a project on other high priority capital facility needs, it is advantageous for districts to attain and maximize savings. Other important aspects of these cost/time savings are not often initially recognizable, since many of the practices are preventative in nature. Examples of expenses that may be averted with best practices include the additional costs incurred for change orders, legal fees, etc.

Although the Cost Reduction Guideline’s benefits are extensive, the SAB has neither the legal means to set these practices as standards, nor the authority to establish reward incentives to persuade districts to use these practices. Additionally, the SFP, as opposed to its predecessor the LPP, provides school districts with the autonomy to manage their own projects. This is integral to the SFP philosophy.

Given the above limitations, staff has prepared the table below to highlight cost and time savings practices found in the report. It is comprised of findings from OPSC survey data and data derived from the Division of State Architect (DSA) and the Coalition for Adequate School Housing (CASH), and illustrates some of the inherent benefits associated with the use of best practices methods. These built-in incentives are the foundation on which we can expand the ongoing efforts to promote and educate districts.

<i>Cost Savings Incentives</i>	<i>Time Savings Incentives</i>
<ul style="list-style-type: none"> <li>➤ 48% saved money in the construction process.</li> <li>➤ Districts spend considerably less on architectural fees.</li> <li>➤ The savings increase as a result of the economy of scale created - as the same plan is reused and time-tested within various situations.</li> <li>➤ Shorter DSA reviews reduce use of outside consultants, ultimately reducing review costs.</li> <li>➤ Budgets can be more realistically projected.</li> </ul>	<ul style="list-style-type: none"> <li>➤ 60% saved time in the construction process.</li> <li>➤ 92% of districts saved time in the application process.</li> <li>➤ The DSA review/approval process is reduced by approximately 20%.</li> <li>➤ Shorter DSA reviews prompt architects to expedite local agency approvals.</li> <li>➤ Shorter DSA reviews reduce use of outside consultants, ultimately reducing plan check variability.</li> <li>➤ Local agency approval time is streamlined.</li> <li>➤ The learning curve is lessened as plan-specific expertise is gained.</li> </ul>

The primary venues to promote the Cost Reduction Guidelines and their inherent benefits are currently in place. However, there are additional ways by which the OPSC can provide further education regarding cost reduction and offer positive reinforcement for those districts pioneering the way. Included below are some ways staff envisions promoting the practices in the report.

## RECOMMENDATIONS

- Call upon the assistance of the county offices of education to promote and educate facility staff to incorporate methods contained in the Best Practices Report.
- Continue to feature cost saving practices and measures contained within the report in its monthly “Advisory Newsletter” and internet site.
- Continue to feature school districts that have been constructed schools utilizing prototype plans or are reusing plans in both either on the OPSC website or newsletters, such as the OPSC Advisory Newsletter or in the Breaking Grounds newsletter.
- Continue its combined efforts with the DSA to feature schools constructed with cost saving methods and identify the actual costs savings related to the projects. School districts employing this practice would be prominently featured on the DSA website.
- Collaborate with the DSA to review possibilities for a time-based reward system that would reduce plan review timeframes for districts who have historically proven track records for issue-free project plan submittals.
- Implement a letter campaign to expound upon the merits of the Cost Reduction Guidelines contained in the report.
- Work with CASH to provide training and workshops featuring cost savings practices including the reuse of plans.
- Sponsor pioneering districts and architects as speakers in a public forum venue such the annual CASH Conference in order to provide other districts with first-party information and hands-on expertise.
- Update the Cost Reduction Guidelines section in the report to provide current project budgeting parameters that would assist in budgeting.

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
October 3, 2003

CHARTER SCHOOL FACILITY PROGRAM  
REGULATION AMENDMENTS

**BACKGROUND**

The Charter School Facility Program, created through Assembly Bill (AB) 14 allowed for the allocation of \$100 million to provide facilities to charter schools. On July 2, 2003 the State Allocation Board (SAB) made the first preliminary apportionments for the program to six charter schools. After the first allocation, the SAB and the California School Finance Authority (CSFA) presented a joint report to the Legislature detailing the implementation of the program, description of the projects funded, and recommendations for statutory change. Senate Bill (SB) 15 (Alpert) contains some of the recommendations as well as other changes to the program.

The attached chart and regulations are reflective of the statutory changes in SB 15, regulation changes as a result of public comment and administrative changes needed for program management.

**Attachment A**

This chart is a summary of the regulations that have been changed as a result of the Joint Report, public comments and new legislation. The points of discussion are broken up by regulation section, current practice, proposed changes and justification for the changes.

**Attachment B**

Proposed regulation text based on SB 15, the Joint Report and public comment.

**Attachment C**

Senate Bill 15 requires the SAB in conjunction with CSFA to establish per project caps to maximize the number of projects that may be given a preliminary apportionment. This item is a discussion paper to begin the discussion on establishing these per project costs. Attachment C1, 2 and 3 are project cost cap samples based on per pupil grants. These samples are based on an applicant receiving all the possible additional grants on top of the base grant for the project.

**Attachment A**  
**Summary of Revised Charter School Facility Program Regulations**  
 SAB Implementation Committee, October 3, 2003

<b>Section</b>	<b>Current Practice</b>	<b>Proposed Change</b>	<b>Justification for Change</b>
DEFINITIONS "CHARTER SCHOOL GENERAL LOCATION" Reg Section 1859.2	In determining a median cost for site acquisition, the general location was based on the Critically Overcrowded Schools (COS) Program using source schools.	Create new definition "Charter School General Location" to mean a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.	The Charter School program differs from the COS that it does not use source schools. This definition will define the area to be used for the median cost calculation and provide a more accurate assessment of the real estate transactions in and around the proposed general location.
DEFINITIONS "FINANCIALLY SOUND" Reg Section 1859.2	n/a	Add reference to California School Finance Authority (CSFA) regulations.	Clarification language to properly reference both sets of regulations.
DEFINITIONS "LARGE CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is greater than 351.	A school in which the enrollment is greater than 501.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "MEDIUM CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is between 101 to 350.	A school in which enrollment is between 251-500.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "REGION 2" Reg Section 1859.2	Tulare county is in Region 3.	Move Tulare county into Region 2.	Tulare was inadvertently left in Region 3 when the distribution was originally done and demographically should have been placed in Region 2 from the onset of the program.
DEFINITIONS "SMALL CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is not more than 100.	A school in which enrollment is not more than 250.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
ADJUSTMENTS TO THE NEW CONSTRUCTION BASELINE ELIGIBILITY Reg Section 1859.51(e)	There is currently no requirement for school district's to update their enrollment when a Preliminary Charter School Application is submitted by a charter school directly.	Require school district's to update their enrollment by completing a new 50-01 within 30 calendar days of receipt of the Preliminary Charter School Application.	As required by legislation – SB 15
PRELIMINARY APPORTIONMENT ELIGIBILITY CRITERIA Reg Section 1859.162	n/a	New legislation requires that prior to the end of the filing period that the applicant must have a charter approved or a material revision to their existing charter approved for that specific school in which they are applying. We have taken it one step further and stated that prior to the submission of the Preliminary Charter School Application that the above must be in place. This will be incorporated into the Preliminary Charter School Application form and the applicant will be required to report the date of the charter approval or of the material revision.	As required by legislation – SB 15

Section	Current Practice	Proposed Change	Justification for Change
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The preliminary apportionment calculation originally referenced the calculation used in the critically overcrowded program.	The preliminary apportionment calculation has been incorporated into the charter school section of the regulations.	Clarification and ability to modify certain areas of the calculations, which are specific to the charter school program.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION "SMALL SIZE PROJECT" Reg Section 1859.163.1 (e)	This allowance is called the Small New School Allowance and is provided if the project meets the requirements of Section 1859.83(c).	Change to allow the charter school to request a small size project, which is a project that will house no more than 200 pupils, as provided in 1859.83(b).	The basis for this change is because the New School Allowance was intended for projects that were going to be built in phases, but needed funding to provide the core facilities up front. When subsequent applications come in to add classrooms, the grant is offset. Due to the nature of the charter school program we don't envision this happening and feel that the small size project is more applicable.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION "USEABLE ACRES" Reg Section 1859.163.1(f)(2)	In the last round, useable acreage was determined by using CDE recommended site size as established for the COS program.	Per the new legislation, CDE has provided new numbers which are exactly half of what is used in the COS program in order to limit the amount of acreage for which each applicant can apply.	As required by legislation – SB15
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The Preliminary Charter School Application currently includes a certification for the Labor Compliance Program.	Regulation language has been included to incorporate the Labor Compliance Program grants.	At the July 2, 2003 State Allocation Board meeting the grants for the LCP were approved and we have incorporated the regulation language to include this reference.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT SITE ACQUISITION VALUE Reg Section 1859.163.2 (3)(b)	Costs for hazardous material clean up are automatically calculated in the site acquisition costs and are provided at 150% of the appraisal or median cost.	Edits will be made to the form to allow the applicant to include a lesser amount for toxic remediation.	Cases may exist where an applicant knows that they will not need the 150% amount for clean up.
CALCULATON OF PREFERENCE POINTS Reg Section 1859.164.1 (a) and (b)	n/a	We have adjusted the low-income scales and the overcrowded scales to add more ranges.	This adjustment was done to allow for more variance and to avoid having projects end up with the same preference points.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT FUND RELEASE Reg Section 1859.164.2	n/a	Regulations have been written to allow for advanced release of funds for separate design equal to 40 percent of the total project cost and/or an advance fund release for site acquisition.	As required in legislation – SB 15

Section	Current Practice	Proposed Change	Justification for Change
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Incorporate the language for the unrestricted Fund to include the 2004 Charter School Facilities Account.	As required by legislation – SB 15
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2002 Charter School Facilities Account or for Preliminary Charter School Applications received from February 2003 to Aril 1, 2003 which were not funded due to insufficient funds shall be used by the Board for other Charter School facility projects.	Per SAB Action on July 2, 2003 and SB 15.
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2004 Charter School Facilities Account shall be used by the Board for other Charter School facility projects.	As required by legislation – SB 15

## ATTACHMENT B

**PROPOSED AMENDMENTS TO THE  
CHARTER SCHOOL FACILITY PROGRAM  
SB 15 AND OTHER REGULATORY AMENDMENTS**

Section 1859.2. Definitions.

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

...  
“Authority” shall have the meaning set forth in Education Code Section 17078.52(c)(1).

...  
“Charter School” shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

...  
“Charter School General Location” shall mean a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

...  
“Classroom-Based Instruction” shall have the meaning set forth in Education Code Section 47612.5(e)(1).

...  
“Final Charter School Apportionment” shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

...  
“Financially Sound” shall have the meaning set forth in Education Code Section 17078.52(e)-(d)(4) and Title 4, California Business Regulations commencing with Section 10151.

...  
“Form SAB 50-09” means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), which is incorporated by reference.

...  
“Large Charter School” shall be defined as a school in which the enrollment is greater than ~~354~~ 501 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...  
“Low-income” shall be those charter schools in which a percentage of the pupils receive free or reduced meals according to the CDE.

...  
“Medium Charter School” shall be defined as a school with an enrollment of ~~404~~ 251 pupils to ~~500~~ 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...  
“Non-profit entity” means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

...  
“Overcrowded School District” for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhoused pupils.

...  
“Preliminary Charter School Application” means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.  
“Preliminary Charter School Apportionment” means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

....  
“Region One” shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

“Region Two” shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

“Region Three” shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, ~~Tulare~~, and Ventura.

“Region Four” shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

...  
“Rural Area” shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

...  
“Small Charter School” shall be defined as a school with an enrollment of not more than ~~400~~ 250 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...  
“Suburban Area” shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

...  
“Urban Area” shall be as a school with a locale code of one as classified by the NCES.

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

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

#### 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 1859.160.
- (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.
- (c) Reduced by the number of pupils housed in additional classrooms constructed or purchased based on the loading standards, pursuant to Education Code Section 17071.25(a)(2)(A), in a modernization SFP project.
- (d) Adjusted as a result of the audit findings made pursuant to Sections 1859.90 and 1859.105.
- (e) Increased/decreased by changes in projected enrollment in subsequent enrollment reporting years for all districts except decreases as provided in (j) below. If a Preliminary Charter School Application is submitted by a Charter School after the initial baseline eligibility was approved by the Board for the district in which the Charter School is physically located and the district's current CBEDS enrollment reporting year is later than the enrollment reporting year used to determine the district's baseline or adjusted eligibility, the district must complete a new Form SAB 50-01 based on the current year CBEDS enrollment data, and submit it to the OPSC within 30 calendar days of receipt of the Preliminary Charter School Application.
- (f) Adjusted as a result of errors or omissions by the district or by the OPSC.
- (g) Adjusted as a result of amendments to these Regulations that affect the eligibility.
- (h) Increased by the number of pupils eligible for grants pursuant to Section 1859.82 (a).
- (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:
  - (1) That is a trailer and transportable/towed on its own wheels and axles.
  - (2) Of less than 700 interior square feet.
  - (3) Excluded pursuant to Education Code Section 17071.30.
  - (4) Where the contract for the lease, lease-purchase, purchase, or construction of the classroom was made prior to January 1, 2000.
  - (5) Where the contract for the lease, lease-purchase, purchase, or construction was made no more than 180 days before the Approved Application date for funding of the classrooms included in the contract.
  - (6) 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.
  - (7) That was acquired with joint-use funds specifically available for that purpose.
- (j) For small school districts, decreased:
  - (1) By any reduction in projected enrollment beginning in the enrollment-reporting year that follows a three year period beginning when the district's baseline eligibility was determined by the Board. The reduction shall be determined by any decrease between the current projected enrollment and the projected enrollment used when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.

- (2) By any increase in the number of pupils included in the latest operational grant report made by the CDE pursuant to Education Code Section 42268 beginning three years after the district's baseline eligibility was determined by the Board pursuant to Section 1859.50. The reduction in eligibility shall be determined by the number of pupils included in the latest operational grant report that exceed the number of pupils included in the operational grant report in effect when the district's baseline eligibility was determined by the Board pursuant to Section 1859.50 or adjusted by a subsequent operational grant report after that date.
- (k) Adjusted for any change in classroom inventory as a result of a reorganization election.
- (l) For classroom loading standards adopted by the Board for non-severely disabled individuals with exceptional needs and severely disabled individuals with exceptional needs.
- (m) As directed by the Board due to a finding of a Material Inaccuracy pursuant to Regulation Section 1859.104.1.
- (n) Increased by the number of pupils that received a Preliminary Apportionment that was rescinded pursuant to Section 1859.148 or a Preliminary Charter School Apportionment that was rescinded pursuant to Section 1859.166.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17052, 17070.51, 17071.25, 17071.75, 17071.76, 17072.20 and 17077.40, Education Code.

## **Article 14. Charter School Facilities Program**

### **Section 1859.160. General.**

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.50 through 17078.64 for new construction shall complete and file a Form SAB 50-09.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

### **Section 1859.161. Preliminary Charter School Application Submittals.**

A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003, or between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing additional funding.

The Board may establish additional application filing periods as needed.

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

Reference: Section 17078.53, Education Code.

### **Section 1859.162. Preliminary Apportionment Eligibility Criteria.**

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form

SAB 50-09 if all of the following conditions are met: ~~the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level of project being proposed in the Charter School application.~~

- (a) the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level(s) being proposed in the Preliminary Charter School Application; and,
- (b) prior to submission of the Preliminary Charter School Application the requirements of EC Section 17078.53(d) are met.

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

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

#### Section 1859.162.1. Overlapping District Boundaries.

If the Charter School provides or will provide instruction for a combination of grade levels and therefore is or will be located in more than one school district's boundaries (e.g. elementary and high school district, not unified), a separate Form SAB 50-09 requesting pupil grant eligibility from each district, as appropriate will be required. For the purposes of receiving a Preliminary Charter School Apportionment pursuant to Section 1859.163, the applications will be combined into one to be funded concurrently.

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

Reference: Sections 17078.53 and 17078.54, Education Code.

#### Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. ~~The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1.~~ In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

#### Section 1859.163.1. Preliminary Charter School Apportionment Determination.

The Preliminary Charter School Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Charter School Application:

- (1) \$5,226.82 for each elementary school pupil.
- (2) \$5,533.65 for each middle school pupil.
- (3) \$7,225.94 for each high school pupil.
- (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
- (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.163.2.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
  - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.
- (e) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to 1859.83(b)(1) or (b)(2), as appropriate.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
  - (1) The district has requested an increase for multilevel construction pursuant to (b) above.
  - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined multiplying the sum of the pupil grants requested on Form SAB 50-09, and the current CBEDS enrollment on the site (if applicable) by .008875 for elementary school pupils, .0105 for middle school pupils and .01236 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-09.
- (3) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (h) An amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2003. An amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than 120 calendar day after the 2004 election authorizing the funding for the program.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

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

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
- (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.
  - (2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed useable acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
- (1) 21 percent of the value determined in (a).
  - (2) The sum of the following:
    - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
    - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
  - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.
- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2), above.

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

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

#### Section 1859.164. Application Funding Criteria.

If the estimated total apportionments of all Financially Sound Preliminary Charter School Applications received in either filing period specified in Section 1859.161 exceed the funds available, the applications shall be identified in each of the following four categories:

- (a) Geographical Region One, Two, Three, or Four.
- (b) Urban, Rural, or Suburban areas.
- (c) Large, Medium, or Small Charter Schools.
- (d) K-6, 7-8, or 9-12 grade levels.

The Board shall first apportion one project of each possible type, a maximum of four in category (a) and a maximum of three in categories (b) through (d), starting with (a) and continuing through (d). If more than one application is received of the same type within a category, the Board will apportion based on which project has the highest preference points, calculated in Section 1859.164.1. If a project has the highest preference points but was previously apportioned, the project with the next highest preference points will be apportioned. The same process will continue for the remaining categories until the Board has apportioned a project within each type in categories (a) through (d), or until no funding remains. If after funding one project in each category (a) through (d), funding remains available, the process shall be repeated until no funding remains.

All Preliminary Charter School Applications received from an Charter School will be processed in the date order received by the OPSC. If more than one Preliminary Charter School Application is received on the same day from the same Charter School, those applications will be processed by the OPSC based on the priority order assigned to those applications by the Charter School on Form SAB 50-09.

If two or more Preliminary Charter School Applications have the same preference points, the Board shall first apportion that Preliminary Charter School Application that was received first by the OPSC. Any applications the SAB is unable to provide a Preliminary Charter School Apportionment to will be returned to the Charter School.

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

Reference: Section 17078.56, Education Code.

#### Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a Financially Sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for the district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
5-15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28
74-82%	32
83-91 <u>92%</u>	36
<u>92-100%</u> <u>93</u>	<u>40</u> <u>36.5</u>
<u>94</u>	<u>37</u>
<u>95</u>	<u>37.5</u>
<u>96</u>	<u>38</u>
<u>97</u>	<u>38.5</u>
<u>98</u>	<u>39</u>
<u>99</u>	<u>39.5</u>
<u>100</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment (round up) and multiplying the product by 100. Use the following sliding scale to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
2-5%	4
<del>6-9%</del>	<del>8</del>
10-13%	12
14-17%	16
18-21%	20
<del>22-27%</del>	<del>24</del>
<del>28-34%</del>	<del>28</del>
35-41%	32
42-50%	36
51% and above	40

<u>Percentage Overcrowded</u>	<u>Preference Points Assigned</u>
<u>2-9%</u>	<u>4</u>
<u>10-13%</u>	<u>8</u>
<u>14-16%</u>	<u>12</u>
<u>17-19%</u>	<u>16</u>
<u>20-22%</u>	<u>20</u>
<u>23-25%</u>	<u>24</u>
<u>26-33 %</u>	<u>28</u>
<u>34-41%</u>	<u>32</u>
<u>42-49%</u>	<u>36</u>
<u>50% and above</u>	<u>40</u>

(c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 20 preference points.

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

Reference: Section 17078.56, Education Code.

**Section 1859.164.2 Preliminary Charter School Apportionment Fund Release.**

A Charter School may request an advance release of funds from a Preliminary Charter School Apportionment for either of the following:

- (a) A separate advance release of funds for design equal to 40 percent of the amount determined in Section 1859.163.1(a).
- (b) A separate advance release of funds for site acquisition for an amount, not to exceed the Preliminary Charter School Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-09 pursuant to Section 1859.160.

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial sound status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Charter School Preliminary Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the district may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: 17070.35 and 17078.64, Education Code

Reference: 17078.53, Education Code

**Section 1859.165. Conversion of Preliminary Charter School Apportionment.**

When a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, all the following criteria must be met:

- (a) The Final Charter School Apportionment request must meet all criteria on the Form SAB 50-04 for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (b) A Charter School seeking to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment shall complete and file Form SAB 50-04, which cannot exceed more than 100 percent of the pupils the Charter School originally requested and received at the Preliminary Charter School Apportionment.

If the Charter School is unable to meet the criteria in this Section, the Preliminary Charter School Apportionment shall be rescinded pursuant to the provisions of Section 1859.166.

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

Reference: Section 17078.52, Education Code.

#### Section 1859.166. Time Limit on Preliminary Charter School Apportionment.

- (a) A complete request to convert a Preliminary Charter School Apportionment to a Final Charter School Apportionment pursuant to Section 1859.165 shall be made within four years of the date of the Preliminary Charter School Apportionment unless the Charter School received approval of an extension pursuant to Section 1859.166.1.
- (b) If (a) is not met, the Preliminary Charter School Apportionment shall be rescinded and the SFP New Construction Eligibility will be increased for the pupils assigned to the Preliminary Charter School Application for the school district that physically contains the Charter School within its geographical boundaries.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

#### Section 1859.166.1. Preliminary Charter School Apportionment Time Limit Extension.

A Charter School that has received a Preliminary Charter School Apportionment may request a single one-year extension of the time limit prescribed in Section 1859.166(a). The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The Charter School has provided evidence of both of the following:
  - (1) The CDE has made a contingent or final approval of the proposed site; and,
  - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board justifying the extension.

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

Reference: Section 17078.52, Education Code.

#### Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the

Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
  - (1) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.
  - (2) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Fund in the 2002 Charter School Facilities Account pursuant to ~~this~~ Subsection (a), and not used under (b)(1), ~~or~~ (b)(2), or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 presented to the Board but were not funded due to insufficient funds, shall be used by the Board for other Charter School facility projects .

Any funds deposited into the Unrestricted Fund in the 2004 Charter School Facilities Account pursuant to Subsection (a), and not used under (b)(1) or (b)(2), shall be used by the Board for other Charter School facility projects.

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

Reference: Section 17078.52, Education Code.

#### Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

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

Reference: Section 17078.54, Education Code.

#### Section 1859.169. Eligible Expenditures.

Expenditures made with the Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

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

Reference: Sections 17078.52, Education Code.

#### Section 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50-09 on its own behalf pursuant to this Article shall comply with the reporting requirements of Sections 1859.100, 1859.101, 1859.102, and 1859.106.

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

Reference: Section 17078.54, Education Code.

#### Section 1859.171. Use of Facility.

Once a Charter School is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, the school district where the Charter School is physically located can either:

- (a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
  - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
  - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- (b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

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

Reference: Section 17078.62, Education Code.

**ATTACHMENT C**

SAB Implementation Committee, October 3, 2003  
Charter School Facility Program  
Regulation Changes

**BACKGROUND**

SB 15 requires the SAB to establish per project funding caps to maximize the number of projects that may be given a preliminary apportionment.

**DISCUSSION**

The law leaves it up to the SAB and CSFA to determine the per project funding caps on the total project cost, not just the State share. The following options discussed will propose that the caps be based on the grade level of the project. In some cases we realize that due to the nature of the charter schools, the traditional K-6, 7-8, and 9-12 caps may need to be adjusted and has been addressed in the proposal outlined below. The statute also required limitations to the amount of acreage that can be requested.

**OPTIONS**

There are several options to consider when determining a per project cap amount (total project cost). Any cap amount decided on **should not** include costs associated with site acquisition because the real estate climate over the State varies so much. A few options are as follows:

1. The calculation of the preliminary apportionment could consist of the base grant and site development costs and not allow the supplemental grants (small size project, geographic, multi-level, urban adjustment).

This option would disadvantage smaller projects requesting less pupil grants that are under the per project grade level cap. They would no longer be eligible to receive the benefits of requesting these grants.

2. Create different levels within each grade level cap. For example define a pupil range for small, medium, and large elementary schools and assign a cap at all three levels. This would also be done for middle and high school.

Again this option creates certain disadvantages based on the size of the project. Also, these numbers would be arbitrarily assigned because a data source on the size of charter schools by various grade levels is unavailable.

3. Assign a total project cap per grade level and allow for the supplemental grants to be given to the project provided that the cap is not exceeded.

This option would be the most straightforward method, which is important because charter schools often have not participated in State school facility programs and may not be aware of other requirements of the School Facility Program.

### **PROPOSAL – Recommend Option #3**

#### **Basic Rule:**

The OPSC proposes the following total project funding caps, which are exclusive of site acquisition costs:

K-6: \$5 million  
7-8: \$7 million  
9-12: \$15 million

The above numbers were generated from Samples 1 and 2 (Attachment C1 and C2). Both samples represent all the grant amounts available to a project based on the pupils requested. It is important to note that a project may or may not be eligible for all the allowances. The pupil grants in Sample 1 (Attachment C1) are derived from general numbers of an elementary, middle, and high school. The pupil grants in Sample 2 (Attachment C2) are the average pupil requests at each grade level from the projects presented to the SAB on July 2<sup>nd</sup> (see Attachment C3).

Using data from both samples and history from prior projects focusing mainly on the base grant amount and site development, the caps were set at the above amounts.

Projects that contain multiple grade levels will receive the cap for the highest grade level served provided all grades within that group are being served. If all grades are not being served within that group, the cap for the project will be based where the majority of the pupils are being requested.

#### **Previously Approved Projects:**

Projects that received a preliminary apportionment from the SAB on July 2, 2003 would not be subject to the cap. However any projects outside of the six that receive a preliminary apportionment due to subsequent funding from the 2002 bonds will be required to adhere to the cap limits.

# SB 15

## CHARTER SCHOOL FACILITIES PROGRAM

### TOTAL PROJECT COST CAP

#### ATTACHMENT C1

This sample uses general numbers of an elementary, middle, and high school charter.

Project Details	Type of Project		
	K-6	7-8	9-12
Pupil Grants	350	450	750
Classrooms	14	17	28
Acres*	3.1	4.75	9.25

#### Grant Calculations

Base Grant	\$2,054,500.00	\$2,796,300.00	\$6,087,000.00
Multi-Level Grant (12%)	\$246,540.00	\$335,556.00	\$730,440.00
Urban/Security (15% was used for this example as it is the lowest percentage allowed)	\$308,175.00	\$419,445.00	\$913,050.00
Site Development Costs (using \$70,000/acre)	\$217,000.00	\$332,500.00	\$647,500.00
<b>Subtotal 1</b>	<b>\$2,826,215.00</b>	<b>\$3,883,801.00</b>	<b>\$8,377,990.00</b>

Geographic Percent (5%)	\$141,310.75	\$194,190.05	\$418,899.50
<b>Subtotal 2</b>	<b>\$2,967,525.75</b>	<b>\$4,077,991.05</b>	<b>\$8,796,889.50</b>

12% Inflation Factor	\$356,103.09	\$489,358.93	\$1,055,626.74
<b>Subtotal 3</b>	<b>\$3,323,628.84</b>	<b>\$4,567,349.98</b>	<b>\$9,852,516.24</b>

Labor Compliance Program Grant	\$22,203.25	\$26,909.81	\$50,380.57
Total State Share	\$3,345,832.09	\$4,594,259.79	\$9,902,896.81
<b>Total Project Cost</b>	<b>\$6,691,664.18</b>	<b>\$9,188,519.57</b>	<b>\$19,805,793.62</b>

These calculations are based on the assumption that the charter school is eligible for all grants calculated above.

\*The acreage amounts have been calculated using the new recommended site size.

SB 15  
 CHARTER SCHOOL FACILITIES PROGRAM  
 TOTAL PROJECT COST CAP  
 ATTACHMENT C2

This sample used the average of pupil grants requested as shown on Attachment C3.

Project Details	Type of Project		
	K-6	7-8	9-12
Pupil Grants	328	227	262
Classrooms	13	8	10
Acres*	2.91	2.38	3.24
<b>Grant Calculations</b>			
Base Grant	\$1,925,360.00	\$1,410,578.00	\$2,126,392.00
Multi-Level Grant (12%)	\$231,043.20	\$169,269.36	\$255,167.04
Urban/Security (15%) was used for this example as it is the lowest percentage allowed)	\$288,804.00	\$211,586.70	\$318,958.80
Site Development Costs (using \$70,000/acre)	\$203,770.00	\$166,600.00	\$226,800.00
<b>Subtotal 1</b>	<b>\$2,648,977.20</b>	<b>\$1,958,034.06</b>	<b>\$2,927,317.84</b>
Geographic Percent (5%)	\$132,448.86	\$97,901.70	\$146,365.89
<b>Subtotal 2</b>	<b>\$2,781,426.06</b>	<b>\$2,055,935.76</b>	<b>\$3,073,683.73</b>
12% Inflator Factor	\$333,771.13	\$246,712.29	\$368,842.05
<b>Subtotal 3</b>	<b>\$3,115,197.19</b>	<b>\$2,302,648.05</b>	<b>\$3,442,525.78</b>
	\$6,230,394.37	\$4,605,296.11	\$6,885,051.56
	\$43,114.22	\$37,936.95	\$45,143.66
Labor Compliance Program Grant	\$21,557.11	\$18,968.47	\$22,571.83
Total State Share	\$3,136,754.30	\$2,321,616.53	\$3,465,097.61
<b>Total Project Cost</b>	<b>\$6,273,508.60</b>	<b>\$4,643,233.06</b>	<b>\$6,930,195.22</b>

These calculations are based on the assumption that the charter school is eligible for all grants calculated above.

\*The acreage amounts have been calculated using the new recommended site size.

Attachment C3

State Allocation Board Meeting, July 2, 2003  
Charter School Facility Preliminary Apportionments

Application Number	District	County	Charter School	50-09 Received Date	Total Preference Points	Region	Funding Order	Urban, Rural, Suburban	Funding Order	Large, Medium, Small	Funding Order	Grade Level	Funding Order	Grants Requested			Grants Based on Project Type			Estimated State Share (including Lease Payment Amt)	Total Project Cost
														K-6	7-8	9-12	K-6	7-8	9-12		
54/68676-00-001	STOCKTON UNIFIED	SAN JOAQUIN	STOCKTON CHARTER	4/1/2003	68	1	1	Suburban		Medium		K-6		352			352			20,811,386.00	20,811,386.00
54/61259-13-001	OAKLAND UNIFIED	ALAMEDA	OAKLAND CHARTER	4/1/2003	64	2	2	Urban		Medium		9-12			275	425			700	17,367,918.00	17,367,918.00
54/64352-00-001	CENTINELA VALLEY UNION HIGH	LOS ANGELES	ANIMO LEADERSHIP HIGH	4/1/2003	96	3	3	Suburban		Large		9-12				310			310	10,023,014.00	10,023,014.00
54/66670-00-001	SANTA ANA UNIFIED	ORANGE	ORANGE COUNTY HIGH SCHOOL OF TH	4/1/2003	44	4	4	Urban		Large		7-8		567	267			834		28,634,364.00	28,634,364.00
54/64733-00-002	LOS ANGELES UNIFIED	LOS ANGELES	MONTAGUE STREET ELEM.	4/1/2003	76	3		Urban	5	Large		K-6		400			400			17,568,380.00	17,568,380.00
54/72769-00-001	WHEATLAND UNION HIGH	YUBA	ACADEMY FOR CAREER EDUCATION	4/1/2003	40	1		Rural	6	Small		9-12				55			55	2,629,094.00	2,629,094.00
54/67686-00-001	COLTON JOINT UNIFIED	SAN BERNARDIN	LAS BANDERAS ACADEMY CHARTER	4/1/2003	76	3		Suburban	7	Medium		9-12			116	234			350	15,405,596.00	15,405,596.00
54/64733-00-004	LOS ANGELES UNIFIED	LOS ANGELES	CAMINO NUEVO CHARTER ACADEMY - C	4/1/2003	76	3		Urban		Large	8	K-6		350	162			512		25,401,652.00	25,401,652.00
54/64733-00-003	LOS ANGELES UNIFIED	LOS ANGELES	WATTS LEARNING CENTER (CHARTER)	4/1/2003	76	3		Urban		Medium	9	K-6		450				450		16,131,058.00	16,131,058.00
54/10215-00-001	MARIN COUNTY OFFICE OF ED	MARIN	PHOENIX ACADEMY	4/1/2003	48	1		Suburban		Small	10	9-12				55			55	4,056,124.00	4,056,124.00
54/64733-00-006	LOS ANGELES UNIFIED	LOS ANGELES	ACCELERATED CHARTER ELEMENTARY	4/1/2003	64	3		Urban		Medium		K-6	11	375					375	18,378,976.00	18,378,976.00
54/64634-00-001	INGLEWOOD UNIFIED	LOS ANGELES	ANIMO INGLEWOOD CHARTER HIGH	4/1/2003	72	3		Suburban		Medium		9-12	12			312			312	10,070,350.00	10,070,350.00
54/75283-00-001	NATOMAS UNIFIED	SACRAMENTO	NATOMAS CHARTER #19	4/1/2003	64	1	13	Urban		Large		9-12				255			255	5,192,164.00	5,192,164.00
54/69062-00-001	SEQUOIA UNION HIGH	SAN MATEO	SEQUOIA CHARTER	4/1/2003	44	2	14	Suburban		Medium		9-12				320			320	67,127,824.00	67,127,824.00
54/64733-00-001	LOS ANGELES UNIFIED	LOS ANGELES	VAUGHN HIGH SCHOOL TEACHING ACA	3/19/2003	56	3	15	Urban		Large		9-12				500			500	15,850,858.00	24,850,858.00
54/68585-00-001	LODI UNIFIED	SAN JOAQUIN	LODI CHARTER	4/1/2003	56	1		Suburban	16	Medium		K-6		352				352		7,699,420.00	7,699,420.00
54/67314-00-001	ELK GROVE UNIFIED	SACRAMENTO	ELK GROVE CHARTER	4/1/2003	48	1		Suburban		Medium	17	9-12		20	15	145			180	3,782,084.00	3,782,084.00
<b>AVG=</b>														<b>328</b>	<b>227</b>	<b>262</b>	<b>407</b>	<b>834</b>	<b>304</b>	286,130,262.00	295,130,262.00

**STATE ALLOCATION BOARD**

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



**Date:** October 24, 2003

**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 Friday, November 7, 2003 (9:30 am - 3:30 pm) at 1500 Capitol Ave., in conference room(s) 72.148C and 72.149B (Sacramento, CA).

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Charter Schools Facilities Program (SB 15)  
*Discussion of eligibility determination, per-pupil project caps, site acreage limitations and other Charter program issues*
3. Critically Overcrowded School Program  
*Discussion of the factor for inflation, change in site "median cost" calculation, use of grants and other COS program refinements*
4. Lease Lease Back and Other Delivery Methods  
*Review of previous discussions, including the September item to the SAB, presentation of OPSC position on the use of EC 17406*
5. Financial Hardship Criteria (SB 303)  
*Discussion of the 60% debt requirement*

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

**State Allocation Board Implementation Committee  
November 7, 2003**

**Charter School Facility Program**

At the October 3, 2003 State Allocation Board (SAB) Implementation Committee meeting, changes to the Charter School Facility Program (CSFP) based on Senate Bill 15 and recommendations from the last funding cycle were discussed. Listed below are the significant issues that were discussed at the meeting:

1. There was discussion regarding the definition for charter school general location to determine median cost for site acquisition and using the proposed location of the charter school project as identified in the chartering agreement. A concern was raised that the chartering agreements may not identify a proposed location. The Office of Public School Construction (OPSC) proposes to add a section to the form in which the charter school would identify the proposed location (intersection or street address) as a starting point for the three mile radius to determine median cost.
2. There was discussion regarding the definitions for a small, medium and large charter school. There was a proposal as follows: Small Charter School shall be a school with pupils 175 or under, Medium Charter School shall be a school with pupils between 176-350 and a Large Charter School shall be a school with pupils over 351. The definitions have been adjusted as noted above. (See Attachment D)
3. There was a discussion regarding the Urban Allowance. With the revised acreage numbers based on the California Department of Education's (CDE) recommendation, which is a recommendation for Charter School projects, the urban allowance would be based on the "new" recommended site size. Concern was expressed that this would lessen the urban allowance even though the district still had the added cost of building on a small site. CDE's recommended site size is at the heart of the urban calculation, therefore when you change the recommended site size for charter school projects it is appropriate to augment the urban calculation accordingly.
4. There was a discussion and proposal to re-look at the definition of low-income to determine if there is a more equitable measure to use for the purposes of calculating preference points for the CSFP. Further discussions with CDE have lead us to leaving the definition as it currently is stated in the regulations, for the following reasons:

- CDE has stated that a direct funded charter school may submit the free/reduced lunch documentation and not actually be serving lunches because in some cases they may not have a cafeteria; it is simply a tool used to measure the number of kids that qualify as Title 1. These pupils are assigned a "free/reduced" lunch percentage on CDE's listing - and we would then be able to use these numbers to calculate preference points.
- Free/reduced lunch was also used as a measure to determine "low-income" for SB 740, which assists charter schools with funding for the cost of leasing non-district owned facilities.

There may be some perceived flaws with using Free/Reduced Lunch as a measure for the program, such as a small amount of kids that could be eligible but for some reason do not submit the forms; however we feel that this measure is the most equitable and used in other programs administer by the State to classify low-income. Additionally, if we were to allow a charter school to submit other evidence for meeting the income standards, there would be no set methodology across the board to calculate preference points, which determines who will be funded.

5. There was also a discussion regarding the filing period for the next round of funding. The filing period for the potential funding allocated in the 2004 Bond is set in regulation. Upon review of the timelines under the current regulation, staff would need to begin accepting applications at the beginning of January 2004. Given the complexity of the issues and the various organizations involved, both the OPSC and CSFA support a change in the regulation to amend the filing period. At the October SAB meeting, the Board approved amendments to the filing period under an emergency basis. The filing period for the next round of funding will be as follows:

*A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 during a period of 120 calendar days beginning 10 days after an election authorizing additional funding.*

## **Discussion Items:**

### *Total Project Funding Cap*

From the last meeting, the OPSC has made one revision to the total project funding cap proposal and has incorporated several items for discussion resulting from subsequent meetings with charter school advocates. A review of the high school cap was conducted and as a result of receiving average enrollment information the high school cap was revised based on a 500-pupil high school. It was revised from \$15 million to \$10 million. (See Attachment A for further detail.)

### *New Construction Eligibility*

There are two issues that surround new construction eligibility as it relates to the charters those charters schools that want to apply yet the district has not established eligibility and those charter schools that apply and current enrollment information is not on file for the district. SB15 states clearly that that the Board shall fund only new construction based on new construction eligibility based on current enrollment data.

If a district does not have established new construction eligibility, a mechanism does not exist to require districts to establish new construction eligibility and therefore a charter would not be eligible to make an application for facilities funding. If the charter school would like to pursue an application and eligibility has not been established, we would encourage the charter school to work with the school district at the local level through the school board and the local community, and have the issue resolved locally.

As stated previously, in order for the SAB to provide a preliminary apportionment to a charter school, the school district's new construction eligibility must be based on current enrollment data. This is regardless of which entity filed the application (charter on its own behalf or school district on behalf of a charter). Charter schools submitting an application on its own behalf should work with the school district to ensure that current enrollment figures are on file with the OPSC.

*Attachment B – Summary of Proposed Regulatory Amendments*

*Attachment C – Proposed Regulation Text*

**ATTACHMENT A – Total Project Funding Caps**  
SAB Implementation Committee, November 7, 2003  
Charter School Facility Program  
Regulation Changes

**BACKGROUND**

SB 15 requires the SAB to establish per project funding caps to maximize the number of projects that may be given a preliminary apportionment.

**DISCUSSION**

The law leaves it up to the SAB and CSFA to determine the per project funding caps on the total project cost, not just the State share. The following option will propose that the caps be based on the grade level of the project, but not include costs associated with site acquisition. In some cases we realize that due to the nature of the charter schools, the traditional K-6, 7-8, and 9-12 caps may need to be adjusted and has been addressed in the proposal outlined below. The statute also required limitations to the amount of acreage that can be requested.

**PROPOSAL**

Basic Rule:

The OPSC proposes the following total project funding caps, which are exclusive of site acquisition costs:

K-6: \$5 million

7-8: \$7 million

9-12: \$10 million (revised based on a 500 pupil high school)

The above numbers were generated from Attachment A1, and focus on the base grant for the project, site development at \$70,000 per acre (maximum acres used), and costs associated with initiating and enforcing a Labor Compliance Program.

Projects that contain multiple grade levels will receive the cap for the highest-grade level served provided all grades within that group are being served. If all grades are not being served within that group, the cap for the project will be based where the majority of the pupils are being requested.

Previously Approved Projects:

Projects that received a preliminary apportionment from the SAB on July 2, 2003 would not be subject to the cap. However any projects outside of the six that receive a preliminary apportionment due to subsequent funding from the 2002 bonds will be required to adhere to the cap limits.

## **ITEMS FOR DISCUSSION**

The following is a list of suggestions, alternatives, and issues to resolve that have been discussed since the last meeting and are being put forth for further discussion:

- Site Acreage Cap – The current proposal recommends a reduction in recommended site size calculation by half to be specific for charter schools. An alternative suggestion is to set the recommended site size at 40 percent of a “traditional” school, with the option to increase to 50 percent if a site is not available or an approval site from CDE is not found at the time the preliminary apportionment application is submitted. A concern with this suggestion are that at the time of preliminary apportionment more than likely the site is unknown and the process for CDE approval has not begun.
- Toxic Remediation – A proposal to set aside funds for hazardous material clean-up for projects at the time the project is converted to a final apportionment when the costs for clean-up are known or estimated. The issue is being reviewed with legal counsel to see if the statute permits a set aside of funds.
- Inflator Factor – Reduce the inflator factor to six percent, which would equate out to three percent for the first and second year and not provide an increase for the third and fourth years. The intent is to encourage conversion of projects faster.
- Relocation and Condemnation – Concern was expressed that the set aside of funds (21 percent of the site value) was too much and that it is highly unlikely for charter schools to utilize this method of acquisition. If 21 percent is too high should it be reduced? Could some other method be used or standards developed specific to charter schools that must be met in order to request relocation costs?
- Increasing Efficiencies – Essentially this proposal focuses around building more for less, that would encourage cost reduction regardless of the size of the project. Projects that are smaller size would be unconcerned with the project funding caps put in place and would have no incentive for reducing costs, where as larger project that is subject to the cap may need to make some difficult decisions on project design. A proposal was put forth that would require a charter school to house 1.25 pupils for every pupil grant worth of eligibility used.
- High School Project Cap – Two suggestions regarding this cap were provided on that would be based on a 600 pupil high school and one based on the original 750 pupil high school.

ATTACHMENT C

PROPOSED AMENDMENTS TO THE  
CHARTER SCHOOL FACILITY PROGRAM  
SB 15 AND OTHER REGULATORY AMENDMENTS

Section 1859.2. Definitions.

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

...

“Authority” shall have the meaning set forth in Education Code Section 17078.52(c)(1).

...

“Charter School” shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

...

“Charter School General Location” shall mean a three-mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

...

“Classroom-Based Instruction” shall have the meaning set forth in Education Code Section 47612.5(e)(1).

...

“Final Charter School Apportionment” shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

...

“Financially Sound” shall have the meaning set forth in Education Code Section 17078.52(e)-(d)(4) and Title 4, California Business Regulations commencing with Section 10152, et al.

...

“Form SAB 50-09” means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), which is incorporated by reference.

...

“Large Charter School” shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Low-income” shall be the percentage of pupils deemed to be eligible for free/reduced lunch as identified in the Free and Reduced Price Meals data on file at the CDE, those charter schools in which a percentage of the pupils receive free or reduced meals according to the CDE.

...

“Medium Charter School” shall be defined as a school with an enrollment of ~~101~~ 176 pupils to 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Non-profit entity” means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

...

“Overcrowded School District” for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhoused pupils.

....

“Preliminary Charter School Application” means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

“Preliminary Charter School Apportionment” means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

....

“Region One” shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

“Region Two” shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

“Region Three” shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, ~~Tulare~~, and Ventura.

“Region Four” shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

...

“Rural Area” shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

...

“Small Charter School” shall be defined as a school with an enrollment of not more than ~~400~~ 175 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Suburban Area” shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

...

“Urban Area” shall be as a school with a locale code of one as classified by the NCES.

...

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

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

#### **Article 14. Charter School Facilities Program**

Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all of the following conditions are met: ~~the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level of project being proposed in the Charter School application.~~

- (a) the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level(s) being proposed in the Preliminary Charter School Application; and.
- (b) prior to submission of the Preliminary Charter School Application the requirements of EC Section 17078.53(d) are met.

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

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. ~~The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1.~~ In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.163.1. Preliminary Charter School Apportionment Determination.

The Preliminary Charter School Apportionment shall be equal to the sum of the following:

(a) The amounts shown below for each pupil included in a Preliminary Charter School Application:

(1) \$5,226.82 for each elementary school pupil.

(2) \$5,533.65 for each middle school pupil.

(3) \$7,225.94 for each high school pupil.

(4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

(5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.

(b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.

(c) An amount equal to one-half of the site acquisition value determined in Section 1859.163.2.

(d) An amount for site development cost determined, at the option of the district, by one of the following:

(1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.

(2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.

(3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.

(e) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to 1859.83(b)(1) or (b)(2), as appropriate.

(f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:

(1) The district has requested an increase for multilevel construction pursuant to (b) above.

(2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size for Charter Schools determined by multiplying the sum of the pupil grants requested on Form SAB 50-09, and the current CBEDS enrollment on the site (if applicable) by .008875 for elementary school pupils, .0105 for middle school pupils and .01236 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-09, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-09.

(3) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.

(g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

(h) For purposes of Charter School projects, an amount equal to the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows:

(1) Subtract 1.31 from the January Class B Construction Cost Index in effect at the time of Preliminary Apportionment.

- (2) Divide the difference determined in (1) by 1.31. Round to four decimal places.
- (3) Divide the quotient in (2) by the number of years between January 1999 and the January Class B Construction Cost Index in (1) above.
- (4) Multiply the quotient in (3) by four. Round to two decimal places.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

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

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
  - (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.
  - (2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed useable acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
  - (1) 21 percent of the value determined in (a).
  - (2) The sum of the following:
    - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
    - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
  - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.

- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2), above.

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

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) ~~Low Income: Up to 40 points based on the percentage of pupils at the Charter School or school district where the Charter School is or will be located that receive/free reduced lunch, whichever is higher. If a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a Financially Sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for the district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:~~

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
5-15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28
74-82%	32
83-91 <del>92%</del>	36
<del>92-100%</del> <u>93</u>	<del>40</del> <u>36.5</u>
<u>94</u>	<u>37</u>
<u>95</u>	<u>37.5</u>
<u>96</u>	<u>38</u>
<u>97</u>	<u>38.5</u>
<u>98</u>	<u>39</u>
<u>99</u>	<u>39.5</u>
<u>100</u>	<u>40</u>

(b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment (round up) and multiplying the product by 100. Use the following sliding scale to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
2-5%	4
6-9%	8
10-13%	12
14-17%	16
18-21%	20
22-27%	24
28-34 %	28
35-41%	32
42-50%	36
51% and above	40

Percentage Overcrowded	Preference Points Assigned
<u>2-9%</u>	<u>4</u>
<u>10-13%</u>	<u>8</u>
<u>14-16%</u>	<u>12</u>
<u>17-19%</u>	<u>16</u>
<u>20-22%</u>	<u>20</u>
<u>23-25%</u>	<u>24</u>
<u>26-33 %</u>	<u>28</u>
<u>34-41%</u>	<u>32</u>
<u>42-49%</u>	<u>36</u>
<u>50% and above</u>	<u>40</u>

(c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 20 preference points.

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

Reference: Section 17078.56, Education Code.

Section 1859.164.2 Preliminary Charter School Apportionment Fund Release.

A Charter School may request an advance release of funds from a Preliminary Charter School Apportionment for either of the following:

(a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a), (b), (d), (e), (f), and (g).

(b) A separate advance release of funds for site acquisition for an amount, not to exceed the Preliminary Charter School Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-09 pursuant to Section 1859.160.

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial sound status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Charter School Preliminary Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the district may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: 17070.35 and 17078.64, Education Code

Reference: 17078.53, Education Code

#### Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
  - (1) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.
  - (2) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Fund in the 2002 Charter School Facilities Account pursuant to this-Subsection (a), and not used under (b)(1), or (b)(2), or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 presented to the Board but were not funded due to insufficient funds, shall be used by the Board for other Charter School facility projects .

Any funds deposited into the Unrestricted Fund in the 2004 Charter School Facilities Account pursuant to Subsection (a), and not used under (b)(1) or (b)(2), shall be used by the Board for other Charter School facility projects.

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

Reference: Section 17078.52, Education Code.

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment, the Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

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

Reference: Section 17078.54, Education Code.

# SB 15

## CHARTER SCHOOL FACILITIES PROGRAM

### TOTAL PROJECT COST CAP

#### ATTACHMENT A1

This sample uses general numbers of an elementary, middle, and high school charter.

Project Details	Type of Project		
	K-6	7-8	9-12
Pupil Grants	350	450	500
Classrooms	14	17	19
Acres*	3.1	4.75	6.18

Base Grant	\$2,054,500.00	\$2,796,300.00	\$4,058,000.00
Site Development Costs (using \$70,000/acre)	\$217,000.00	\$332,500.00	\$432,600.00
<b>Subtotal 1</b>	<b>\$2,271,500.00</b>	<b>\$3,128,800.00</b>	<b>\$4,490,600.00</b>

11% Inflator Factor**	\$249,865.00	\$344,168.00	\$493,966.00
<b>Subtotal 2</b>	<b>\$2,521,365.00</b>	<b>\$3,472,968.00</b>	<b>\$4,984,566.00</b>

Labor Compliance Program Grant	\$19,668.37	\$22,666.20	\$28,829.00
Total State Share	\$2,541,033.37	\$3,495,634.20	\$5,013,395.00
<b>Total Project Cost</b>	<b>\$5,082,066.74</b>	<b>\$6,991,268.40</b>	<b>\$10,026,790.00</b>

\*The acreage amounts have been calculated using the new recommended site size.

\*\*The inflator factor is estimated until the class B index is available in January 2004.

Attachment B  
 Summary of Revised Charter School Facility Program Regulations  
 SAB Implementation Committee, November 7, 2003

Section	Current Practice	Proposed Change	Justification for Change
DEFINITIONS "CHARTER SCHOOL GENERAL LOCATION" Reg Section 1859.2	In determining a median cost for site acquisition, the general location was based on the Critically Overcrowded Schools (COS) Program using source schools.	Create new definition "Charter School General Location" to mean a three-mile radius from the present or proposed location of the Charter School project as identified on the application.	The Charter School program differs from the COS that it does not use source schools. This definition will define the area to be used for the median cost calculation and provide a more accurate assessment of the real estate transactions in and around the proposed general location.
DEFINITIONS "FINANCIALLY SOUND" Reg Section 1859.2	n/a	Add reference to California School Finance Authority (CSFA) regulations.	Clarification language to properly reference both sets of regulations.
DEFINITIONS "LARGE CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is greater than 351.	A school in which the enrollment is greater than 351.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "MEDIUM CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is between 101 to 350.	A school in which enrollment is between 176-350.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "REGION 2" Reg Section 1859.2	Tulare county is in Region 3.	Move Tulare county into Region 2.	Tulare was inadvertently left in Region 3 when the distribution was originally done and demographically should have been placed in Region 2 from the onset of the program.
DEFINITIONS "SMALL CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is not more than 100.	A school in which enrollment is not more than 175.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
ADJUSTMENTS TO THE NEW CONSTRUCTION	There is currently no requirement for school district's to update their enrollment when a Preliminary Charter School Application is	Require school district's to update their enrollment by completing a new 50-01 within 30 calendar days of receipt of the Preliminary	As required by legislation – SB 15

BASELINE ELIGIBILITY Reg Section 1859.51(e)	submitted by a charter school directly.	Charter School Application.	
PRELIMINARY APPORTIONMENT ELIGIBILITY CRITERIA Reg Section 1859.162	n/a	New legislation requires that prior to the end of the filing period that the applicant must have a charter approved or a material revision to their existing charter approved for that specific school in which they are applying. Prior to the submission of the Preliminary Charter School Application that the above must be in place. This will be incorporated into the Preliminary Charter School Application form and the applicant will be required to report the date of the charter approval or of the material revision.	As required by legislation – SB 15
<b>Section</b>	<b>Current Practice</b>	<b>Proposed Change</b>	<b>Justification for Change</b>
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The preliminary apportionment calculation originally referenced the calculation used in the critically overcrowded program.	The preliminary apportionment calculation has been incorporated into the charter school section of the regulations.	Clarification and ability to modify certain areas of the calculations, which are specific to the charter school program.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION “SMALL SIZE PROJECT” Reg Section 1859.163.1 (e)	This allowance is called the Small New School Allowance and is provided if the project meets the requirements of Section 1859.83(c).	Change to allow the charter school to request a small size project, which is a project that will house no more than 200 pupils, as provided in 1859.83(b).	The basis for this change is because the New School Allowance was intended for projects that were going to be built in phases, but needed funding to provide the core facilities up front. When subsequent applications come in to add classrooms, the grant is offset. Due to the nature of the charter school program we don't envision this happening and feel that the small size project is more applicable.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION “USEABLE ACRES”	In the last round, useable acreage was determined by using CDE recommended site size as established for the COS program.	Per the new legislation, CDE has provided new numbers which are exactly half of what is used in the COS program in order to limit the amount of acreage for which each applicant can apply.	As required by legislation – SB15

Reg Section 1859.163.1(f)(2)			
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The Preliminary Charter School Application currently includes a certification for the Labor Compliance Program.	Regulation language has been included to incorporate the Labor Compliance Program grants.	At the July 2, 2003 State Allocation Board meeting the grants for the LCP were approved and we have incorporated the regulation language to include this reference.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT SITE ACQUISITION VALUE Reg Section 1859.163.2 (3)(b)	Costs for hazardous material clean up are automatically calculated in the site acquisition costs and are provided at 150% of the appraisal or median cost.	Edits will be made to the form to allow the applicant to include a lesser amount for toxic remediation.	Cases may exist where an applicant knows that they will not need the 150% amount for clean up.
CALCULATION OF PREFERENCE POINTS Reg Section 1859.164.1 (a) and (b)	n/a	We have adjusted the low-income scales and the overcrowded scales to add more ranges.	This adjustment was done to allow for more variance and to avoid having projects end up with the same preference points.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT FUND RELEASE Reg Section 1859.164.2	n/a	Regulations have been written to allow for advanced release of funds for separate design equal to 40 percent of the total project cost and/or an advance fund release for site acquisition.	As required in legislation – SB 15

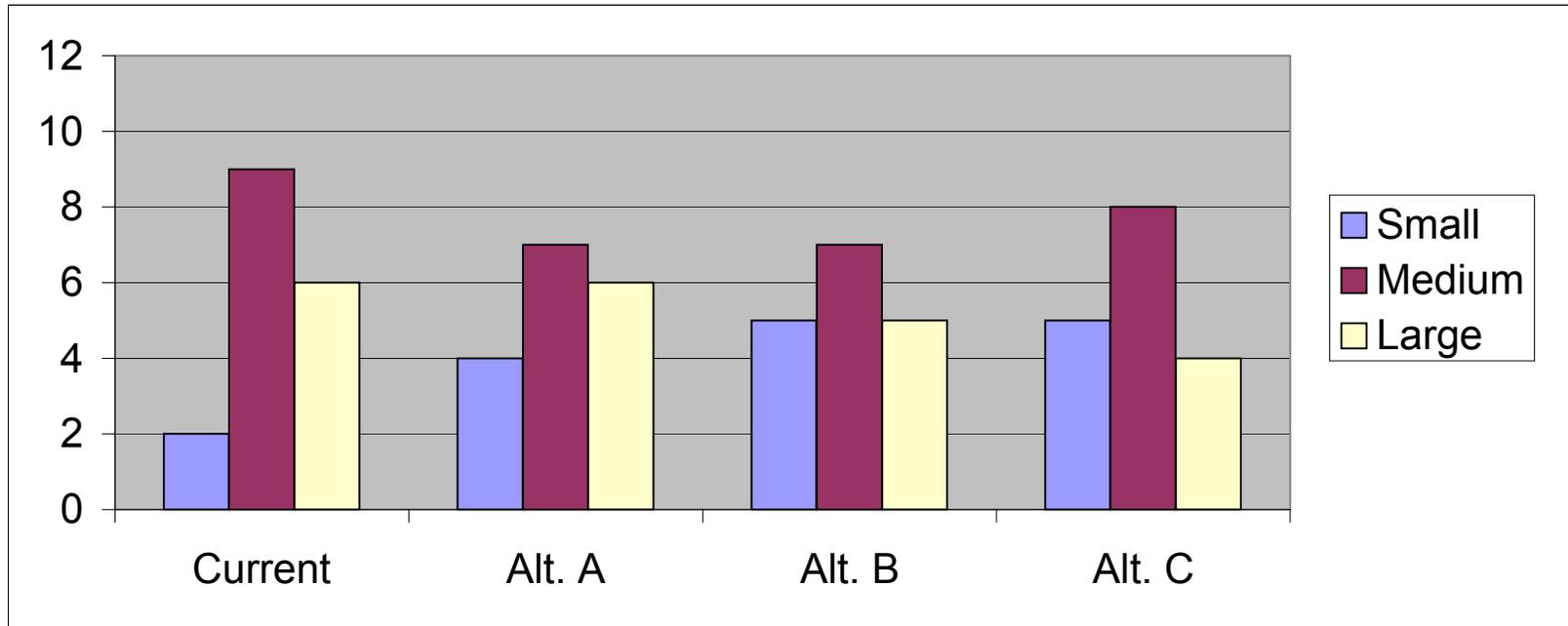
Section	Current Practice	Proposed Change	Justification for Change
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Incorporate the language for the unrestricted Fund to include the 2004 Charter School Facilities Account.	As required by legislation – SB 15
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2002 Charter School Facilities Account or for Preliminary Charter School Applications received from February 2003 to Aril 1, 2003 which were not funded due to insufficient funds shall be used by the Board for other Charter School facility projects.	Per SAB Action on July 2, 2003 and SB 15.
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2004 Charter School Facilities Account shall be used by the Board for other Charter School facility projects.	As required by legislation – SB 15

## Attachment D

### Review of Large, Medium, and Small Size Projects form First Round of Applicants

District	County	Charter School	Current Regs >100, 101-350, 350+	Alternative A >175, 176-350, 351+	Alternative B >250, 251-500, 501+	Alternative C >250, 251-750, 750+
STOCKTON UNIFIED	SAN JOAQUIN	STOCKTON CHARTER	Medium	Medium	Medium	Medium
OAKLAND UNIFIED	ALAMEDA	OAKLAND CHARTER	Medium	Medium	Medium	Medium
CENTINELA VALLEY UNION HIGH	LOS ANGELES	ANIMO LEADERSHIP HIGH	Large	Large	Medium	Medium
SANTA ANA UNIFIED	ORANGE	ORANGE COUNTY HIGH SCHOOL OF THE ARTS	Large	Large	Large	Large
LOS ANGELES UNIFIED	LOS ANGELES	MONTAGUE STREET ELEM.	Large	Large	Large	Large
WHEATLAND UNION HIGH	YUBA	ACADEMY FOR CAREER EDUCATION	Small	Small	Small	Small
COLTON JOINT UNIFIED	SAN BERNARDIN	LAS BANDERAS ACADEMY CHARTER	Medium	Medium	Medium	Medium
LOS ANGELES UNIFIED	LOS ANGELES	CAMINO NUEVO CHARTER ACADEMY - COMMONWEALTH	Large	Large	Large	Large
LOS ANGELES UNIFIED	LOS ANGELES	WATTS LEARNING CENTER (CHARTER)	Medium	Medium	Small	Small
MARIN COUNTY OFFICE OF EDUCATION	MARIN	PHOENIX ACADEMY	Small	Small	Small	Small
LOS ANGELES UNIFIED	LOS ANGELES	ACCELERATED CHARTER ELEMENTARY SCHOOL	Medium	Medium	Medium	Medium
INGLEWOOD UNIFIED	LOS ANGELES	ANIMO INGLEWOOD CHARTER HIGH	Medium	Small	Small	Small
NATOMAS UNIFIED	SACRAMENTO	NATOMAS CHARTER #19	Large	Large	Large	Medium
SEQUOIA UNION HIGH	SAN MATEO	SEQUOIA CHARTER	Medium	Medium	Medium	Medium
LOS ANGELES UNIFIED	LOS ANGELES	VAUGHN HIGH SCHOOL TEACHING ACADEMY	Large	Large	Large	Large
LODI UNIFIED	SAN JOAQUIN	LODI CHARTER	Medium	Medium	Medium	Medium
ELK GROVE UNIFIED	SACRAMENTO	ELK GROVE CHARTER	Medium	Small	Small	Small

	Small	Medium	Large	
Current	2	9	6	17
Alt. A	4	7	6	17
Alt. B	5	7	5	17
Alt. C	5	8	4	17



**State Allocation Board Implementation Committee  
November 7, 2003**

**Critically Overcrowded School Facilities**

**Purpose of Report**

This issue paper presents certain staff and district concerns that came to light during the initial filing period for the Critically Overcrowded School (COS) Facilities program. To that end it discusses options and regulation modifications for the COS program regarding the following issues:

- Use of Grants to be utilized on a COS project
- Hazardous Waste Removal for Existing Sites, with evidence of necessary clean-up
- Inflation Factor percentage allowance determination

**1. Use of Grants to be utilized on a COS project**

**Background Information**

For regular SFP new construction projects, districts may utilize pupil grants at different grade levels or exceeding the pupil capacity of the project, pursuant to Sections 1859.77.2 and 1859.77.3. Currently the COS program does not explicitly provide for a Use of Grants (UOG) situation.

**Issue**

School districts maintain that at certain times they have a need to utilize UOG in order to complete their projects. Some districts were not aware that they could submit a Preliminary Application requesting to utilize a UOG during the initial filing period. For this reason, these districts did not apply for the COS program and were not able to take advantage of the provisions of the COS program. These districts had a demonstrated need to relieve overcrowding which may have been met by using pupil grants at different grade levels than the project to build the necessary classrooms.

To avoid uncertainty among districts, the OPSC believes that the COS regulations should be updated to clarify the option of utilizing a UOG request when submitting a Preliminary Application. Since the Final Apportionment at the time of conversion will be subject to all the components and requirements of a regular SFP new construction project, it would seem to be consistent to make available a UOG provision at the Preliminary Apportionment period. The UOG provision would naturally be restricted to borrowing pupil grants from different grade levels than the project and would not utilize excess grants, as described in Section 1859.77.3(a). The criterion for using excess grants includes the construction of subsidiary facilities, which is in direct conflict of the purpose of the COS program, to provide classrooms.

**Recommendation**

Add a reference to the Use of Grants (Section 1859.77.3(b) only) to the SAB Form 50-08 instructions, clarifying that a district may borrow pupils from another grade level to construct classrooms at another grade level but may not include a request for excess pupil grants. Districts would still have to qualify for a UOG at the time of the conversion.

## **2. Hazardous Waste Removal for Existing Sites, with evidence of necessary clean-up (Regulation Section 1859.145.1):**

### Background Information

The COS program currently specifies that an allowance for hazardous material/waste removal and remediation costs is only available for projects requesting site acquisition for a new site or to expand an existing site. The allowance is calculated at one-half times the property value as determined by Regulation Section 1859.145.1.

Section 1859.74.4(a) for SFP new construction projects states in pertinent part that, "With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide funding... for the necessary hazardous materials/waste removal and/or remediation costs on an existing school site ... if all the following are met:

- (1) The New Construction Grant request is for additional school facilities on an existing school site.
- (2) The New Construction Grant request does not include a funding request for initial site acquisition costs allowed pursuant to Sections 1859.74 or 1859.74.2.
- (3) The existing school site where the New Construction Grant will be expended has a functioning school on the site or the site has a closed school that will again be used as a functioning school.
- (4) The hazardous material clean-up costs are required by the DTSC."

### Issue

OPSC staff believes that the COS program should permit similar allowances to the regular SFP new construction program to ensure that an adequate Preliminary Apportionment is given to the districts in need of hazardous waste removal on existing sites. The costs for clean-up can be significant, even on sites that are currently owned and exist as a functioning school, and an amount should therefore be included on the Preliminary Apportionment. The proposed regulation change is shown on Attachment A.

### Recommendation

Staff believes that the COS program could provide a reservation of funding for hazardous waste removal on existing school sites, if a district can show evidence that clean-up is necessary and also meets all of the criteria given in Section 1859.74.4(a). The amount of the allowance would be calculated the same way as it is in Section 1859.74.4(b), equaling one-half times all of the eligible clean-up costs shown in that regulation section.

## **3. Inflation Factor percentage allowance determination (Regulation Section 1859.145(h):**

### Background Information

The initial COS Program Preliminary Apportionment provided an increase of twelve percent to the estimated proposed project amount, less the Labor Compliance Program allowance, if applicable. This inflation factor serves to mimic the Class B construction cost index increase in costs of constructing a school and allows for a more accurate reservation of funds for the conversion to the future Final Apportionment. The factor was calculated by examining the Class B construction cost index and the pupil grant amounts increases between August 1998 and January 2002, and determining the average total increase over a four year period. This average was found to be 11.71 percent and was rounded up to 12 percent for purposes of the initial COS program application period. The OPSC annually adjusts the allowance amounts in the various programs administered to account for Class B construction cost index changes.

## Issue

The inflation factor percentage of 12 percent was only valid for the first application filing period, ending May 1, 2003. For each subsequent filing period of the COS program, the percentage amount has to be re-evaluated to account for Class B construction cost index changes. If the construction cost index is examined for increases from January 1999 to January 2003, it can be determined that the average cost increase over a four year period is approximately 11.45 percent, which is rounded down to 11 percent. For future filing periods after May 1, 2003, the inflation percentage would be generated by determining the total percentage increase between cost indices in January 1999 and the January of the year of apportionment, divide by the number of years examined to find an average yearly increase, and multiply by four to give an average increase over a four year period.

There are two alternatives to consider:

- 1) Continue using an inflation factor of 12 percent for the 2004 COS filing period; however this does not take into account the most current Class B cost index information.
- 2) Apply an inflation factor for the 2004 COS filing period and subsequent filing periods, as determined above, to give an accurate reservation amount at the Preliminary Apportionment stage.

## Recommendation

Staff believes that it is necessary for the COS program to continue to provide an inflation factor allowance on the Preliminary Apportionment. The amount as determined in Alternative Two seems to be adequate for the purposes of the COS program since this factor is applied over the entire project, including site acquisition and includes the most recent Class B construction cost index information. The proposed regulation change is shown on Attachment A.

# ATTACHMENT A

Title 2. Administration  
Division 2. Financial Operations  
Chapter 3. Department of General Services  
Subchapter 4. Office of Public School Construction  
Group 1. State Allocation Board  
Subgroup 5.5. Regulations Relating to the Leroy F. Greene School Facilities Act of  
1998:  
(School Facility Program)

## Article 13. Critically Overcrowded School Facilities

### Section 1859.140. General (Preliminary Apportionment).

A district seeking a Preliminary Apportionment pursuant to the provisions of Education Code Sections 17078.10 through 17078.30 for new construction shall complete and file a Form SAB 50-08.

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

Reference: Sections 17078.10 and 17078.22, Education Code.

### Section 1859.141. Preliminary Application Submittals.

The Board shall accept Preliminary Applications as follows:

- (a) A district seeking a Preliminary Apportionment from the funding made available from Education Code Section 100620(a)(5), shall complete and submit Form SAB 50-08 between November 6, 2002 and May 1, 2003.
- (b) A district seeking a Preliminary Apportionment from the funding made available from Education Code Section 100820(a)(3), shall complete and submit Form SAB 50-08 between 60 calendar days prior to and 120 calendar days after the 2004 election authorizing the funding.

After the Board has approved a Preliminary Apportionment for a Preliminary Application submitted as provided in (a) and/or (b), a district seeking an advance release of funds for site acquisition pursuant to Section 1859.153(b) or (c), shall be required to submit an additional Form SAB 50-08, to the OPSC, to determine eligible site acquisition costs. A district seeking an advance release of funds for design, engineering, and other pre-construction project costs pursuant to Section 1859.153(a), shall not be required to submit an additional Preliminary Application, as otherwise provided in (a) and/or (b).

If the voters do not approve Proposition 47 and/or the Kindergarten-University Public Education Facilities Bond Act of 2004, any Preliminary Application accepted for processing by the OPSC as provided in (a) and/or (b) as appropriate will be returned unprocessed to the district.

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

Reference: Sections 17078.10 and 17078.20, Education Code.

### Section 1859.142. Preliminary Apportionment Eligibility Criteria.

A district may apply for a Preliminary Apportionment by submittal of Form SAB 50-08 if all of the following criteria are met:

- (a) The district has demonstrated that it has SFP new construction eligibility under Education Code Section 17071.75.
- (b) The project for which the district is requesting funding has not received an apportionment under the LPP, the SFP or other Proposition 1A funds, with the exception of apportionments prior to November 5, 2002 pursuant to Section 1859.81.1(e).
- (c) At least 75 percent of the number of pupils requested on Form SAB 50-08 are Qualifying Pupils from a Source School(s) as determined in Section 1859.143.
- (d) The General Location of a proposed school meets the criteria of Education Code Section 17078.22(a)(3) or (b).

If the proposed school will serve a combination of elementary school pupils and middle school pupils, the General Location of the school for purposes of (d) above shall be based on the highest grade served.

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

Reference: Sections 17078.18 and 17078.22, Education Code.

#### Section 1859.143. Determination of Source School Qualifying Pupil Baseline Eligibility.

After the CDE Source School List has been published by the CDE, the Qualifying Pupils for a Source School shall be determined as follows:

- (a) Multiply the Useable Acres of the Source School by:
  - (1) 86 pupils per acre for a Source School identified as elementary on the CDE Source School List.
  - (2) 68 pupils per acre for a Source School identified as a middle school or a high school on the CDE Source School List.
- (b) Determine the latest CBEDS enrollment for the Source School as of the date the district submitted the Preliminary Application to the OPSC.
- (c) Subtract the amount determined in (a) from the amount determined in (b). The difference is the Qualifying Pupils baseline eligibility for the specific Source School.

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

Reference: Section 17078.18, Education Code.

#### Section 1859.144. Adjustments to the Source School Qualifying Pupil Baseline Eligibility.

The Source School Qualifying Pupil baseline eligibility determined in Section 1859.143 will be adjusted as follows:

- (a) Reduced by the number of Qualifying Pupils the district assigned on the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c).
- (b) Increased by the Qualifying Pupils the district assigned on the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c) that has been rescinded pursuant to Section 1859.148.
- (c) Increased/decreased for changes in CBEDS enrollment in subsequent enrollment reporting years.
- (d) Increased/decreased for changes in the Useable Acres originally reported on the CDE Source School List.

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

Reference: Section 17078.18, Education Code.

#### Section 1859.145. Preliminary Apportionment Determination.

The Preliminary Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Application:
  - (1) \$5,226.82 for each elementary school pupil.
  - (2) \$5,533.65 for each middle school pupil.
  - (3) \$7,225.94 for each high school pupil.
  - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.
  - (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.145.1.
- (e) An amount for site development cost determined, at the option of the district, by one of the following:
  - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-08 or Form SAB 50-09, as appropriate.
- (e) If the Preliminary Application request is for a small new school on a site with no existing school facilities, an amount equal to the difference in the amount determined in (a) and the amount shown in the Chart in Section 1859.83(c). To determine the number of classrooms in the proposed project, divide the number of pupils requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, by 25 for elementary school pupils, 27 for middle and high school pupils, 13 for Non-Severely Disabled Individuals with Exceptional Needs and 9 for Severely Disabled Individuals with Exceptional Needs. Round up.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
  - (1) The district has requested an increase for multilevel construction pursuant to (b) above.
  - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size determined multiplying the sum of the pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-08 or Form SAB 50-09, as appropriate, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-08 or Form SAB 50-09, as appropriate. For purposes of COS projects, if the site for which the Preliminary Apportionment is requested is a Source School, for purposes of assigning Qualifying Pupils in the Preliminary Application, subtract those Qualifying Pupils from the current CBEDS enrollment on the site before completing this calculation.
  - (3) The value of the property as determined in Section 1859.145.1(a)(1) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

- (h) For purposes of COS projects, an amount equal to ~~12 percent~~ of the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows: for all Preliminary Applications received no later than May 1, 2003.
- (1) Subtract 1.31 from the January Class B Construction Cost Index in effect at the time of Preliminary Apportionment.
  - (2) Divide the difference determined in (1) by 1.31. Round to four decimal places.
  - (3) Divide the quotient in (2) by the number of years between January 1999 and the January Class B Construction Cost Index in (1) above.
  - (4) Multiply the quotient in (3) by four. Round to two decimal places.
- For purposes of Charter School projects, an amount equal to 12 percent of the sum of the amounts determined in (a) through (g) for all Preliminary Charter School Applications received no later than March 31, 2003.
- (i) If the district qualifies for financial hardship assistance pursuant to Section 1859.81 at the time of submittal of the Preliminary Application, an amount equal to the sum of the amounts determined in (a) through (h) less any district funds determined available for the project pursuant to Section 1859.81(a). Districts must meet the financial hardship criteria pursuant to Section 1859.81 at the time the request is made to convert the Preliminary Apportionment to a Final Apportionment, including an accountability of any district contribution made available at the time of the Preliminary Apportionment was made, in order to continue with financial hardship assistance for the project.
  - (j) If the district received an apportionment prior to November 5, 2002 pursuant to Section 1859.81.1(e), an amount equal to the sum of the amounts determined in (a) through (i) less the previously authorized apportionment amount.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

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

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

#### Section 1859.145.1. Preliminary Apportionment Site Acquisition Value.

- (a) If the Preliminary Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:
- ~~(a)~~(1) The value of the property determined by one of the following:
    - ~~(1)~~(A) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Application or Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property. The acreage identified in the appraisal or the preliminary appraisal may not exceed the proposed useable acreage requested on Form SAB 50-08 or Form SAB 50-09, as appropriate.
    - ~~(2)~~(B) The Median Cost of an acre of land in the General Location of the proposed project using historical information in the General Location multiplied by the number of proposed useable acres requested on Form SAB 50-08 or Form SAB 50-09, as appropriate. Historical information that may be considered to determine land cost may include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a period of up to two years prior to the date the Preliminary Application was submitted to the OPSC.
  - ~~(b)~~(2) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:

- ~~(1)~~(A) 21 percent of the value determined in (a)(1).
- ~~(2)~~(B) The sum of the following:
- ~~(A)~~1. The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
  - ~~(B)~~2. The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
- ~~(3)~~(C) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the General Location.
- ~~(e)~~(3) Four percent of the amount determined in (a)(1), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- ~~(d)~~(4) For allowable costs of hazardous material/waste removal and remediation costs, one-half times the value of the property determined in either (a)(1)(A) or (a)(2)(B), above.
- (b) If the Preliminary Application includes a request for hazardous waste removal required on an existing school site, the preliminary value for site acquisition funding shall be the sum of the following:
- (1) With the exception of projects that received initial site acquisition funds under the SFP, the Board shall provide an amount, for the necessary hazardous waste materials/waste removal and/or remediation costs on an existing school site where the Preliminary Apportionment will be used if all the following are met:
    - (A) The Preliminary Application request is for additional school facilities on an existing school site.
    - (B) The Preliminary Application request does not include a funding request for site acquisition costs allowed pursuant to Sections 1859.145.1(a).
    - (C) The existing school site where the Preliminary Apportionment will be expended has a functioning school on the site or the site had a closed school that will again be used as a functioning school.
    - (D) The hazardous material cleanup costs are required by the DTSC.
  - (2) If all the criteria in subsection (b) are met, the allowable hazardous waste removal cleanup costs shall be all the following:
    - (A) The costs for preparation of the POESA, the PEA and the RA.
    - (B) The costs to implement the RA as determined necessary in the PEA that has been approved by the DTSC subject to the following:
      - 1. The costs may include the DTSC costs for review and oversight of the preparation and implementation of the RA.
      - 2. The costs may not include continuous operational and maintenance costs associated with the RA.

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

Reference: Sections 17072.13, 17078.10, Section 17072.18 and 17078.24, Education Code.

#### Section 1859.146. Preliminary Apportionment Funding Priorities.

If the amount of the Preliminary Applications received pursuant to Section 1859.141 exceed the funds available, the Board shall first apportion those Preliminary Applications that will house pupils from Source Schools with the highest pupil density levels. The calculation in (a) through (e) below is made independently for each Source School from which Qualifying Pupils are assigned. All calculations are rounded up to four decimal places. The pupil density level for the Preliminary Application is the amount determined in (f) as follows:

- (a) Divide the latest CBEDS enrollment of the Source School by the Useable Acres of the Source School as shown on the CDE Source School List.
- (b) Divide the quotient determined in (a) by:

- (1) 115 if the Source School is identified as an elementary school on the CDE Source School List.
- (2) 90 if the Source School is identified as a middle school or a high school on the CDE Source School List.
- (c) Subtract 1 from the quotient determined in (b).
- (d) Divide the Source School's Qualifying Pupils by the total Qualifying Pupils assigned.
- (e) Multiply the difference determined in (c) by the quotient determined in (d).
- (f) Add the product(s) determined in (e) for each Source School the district assigned Qualifying Pupils from to meet the 75 percent requirement in Section 1859.142(c).

All Preliminary Applications received from a district will be processed in the date order received by the OPSC. If more than one Preliminary Application is received on the same day, those applications will be processed by the OPSC based on the priority order assigned to those applications by the district on Form SAB 50-08.

If two or more Preliminary Applications have the same pupil density level, the Board shall first apportion that Preliminary Application that was received first by the OPSC.

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

Reference: Section 17078.20, Education Code.

#### Section 1859.147. Conversion of Preliminary Apportionment.

When a Preliminary Apportionment is converted to a Final Apportionment, all the following criteria must be met:

- (a) The district must have current New Construction Eligibility sufficient to support at least 75 percent of the pupils the district requested and received the Preliminary Apportionment, except as allowed in (d).
- (b) The Final Apportionment request must meet all criteria for a New Construction Adjusted Grant pursuant to Section 1859.21.
- (c) A district seeking to convert a Preliminary Apportionment to a Final Apportionment shall complete and file Form SAB 50-04, which requests funding for at least 75 percent, but not more than 100 percent, of the pupils the district requested and received the Preliminary Apportionment.
- (d) In lieu of (c), when the district's enrollment has decreased to less than 75 percent of the pupils requested for the project's Preliminary Apportionment, the district may utilize any SFP eligibility justified for its conversion to a Final Apportionment.

It is not necessary to re-justify the Qualifying Pupils assigned to the Preliminary Application as required by Section 1859.142(c) at the time the application is converted to a Final Apportionment.

If the district is unable to meet the criteria in this Section, the Preliminary Apportionment shall be rescinded pursuant to the provisions of Section 1859.148.

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

Reference: Section 17078.27, Education Code.

#### Section 1859.148. Time Limit on a Preliminary Apportionment.

- (a) A Preliminary Apportionment not converted or requested to be converted to a Final Apportionment shall be rescinded:
  - (1) After one year from the date the Preliminary Apportionment was made unless the CDE has determined:
    - (A) There is at least one approvable site for the project within the General Location; and,

- (B) The General Location of the proposed school will serve the Qualifying Pupils assigned to the Preliminary Application.
- (2) After four years from the date the Preliminary Apportionment was made unless the district received approval of an extension pursuant to Section 1859.148.1.
- (3) After five years from the date the Preliminary Apportionment was made if the district qualified for an extension pursuant to Section 1859.148.1.
- (b) If a Preliminary Apportionment that did not have an advance release of funds pursuant to Section 1859.153 is rescinded, the following will occur:
  - (1) The SFP new construction baseline eligibility will be increased for the pupils assigned to the Preliminary Application not previously included in an apportionment pursuant to Section 1859.81.1(e). The previous design only apportionment, prior to November 5, 2002, shall be reduced to cost incurred with a corresponding SFP new construction baseline eligibility adjustment and closeout pursuant to Section 1859.106.
  - (2) The Qualifying Pupil baseline eligibility will be increased by the Qualifying Pupils assigned to meet the 75 percent requirement in Section 1859.142(c) of the Preliminary Application.
  - (3) Any Preliminary Apportionment rescinded is subject to accountability pursuant to Section 1859.154(c).
  - (4) The district may request funding for the proposed project again, without restriction under any SFP Program, provided the project meets the eligible criteria of that specific program. Re-submittal of the funding request may occur as follows:
    - (A) If the project was rescinded pursuant to (a)(1) or (a)(3), anytime after the Preliminary Apportionment is rescinded.
    - (B) If the project was rescinded pursuant to (a)(2) and the final plans for the project are not complete within four years of the Preliminary Apportionment, anytime after the Preliminary Apportionment is rescinded.
    - (C) If the project was rescinded pursuant to (a)(2) and the final plans for the project were completed within four years after the Preliminary Apportionment, anytime after a period of five years from the date of the Preliminary Apportionment.
  - (5) The Preliminary Apportionment shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.
- (c) If a Preliminary Apportionment that had an advance release of funds as provided in Section 1859.153 and/or an apportionment pursuant to Section 1859.81.1(e) prior to November 5, 2002, is rescinded pursuant to (a)(2) or (a)(3), the following will occur:
  - (1) The remaining Preliminary Apportionment, not released to the district, shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.
  - (2) Funds released pursuant to Sections 1859.81.1(e) and 1859.153 shall be reduced to cost incurred and closeout pursuant to Section 1859.106 with a corresponding SFP new construction baseline eligibility adjustment for the pupils assigned to the Preliminary Application. Funds returned pursuant to Section 1859.106 shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.
  - (3) The Qualifying Pupil baseline eligibility will be adjusted proportionately to the adjustment in (c)(2) and maintain the ratio of SFP New Construction Eligibility to Qualifying Pupils assigned to meet the requirements in Section 1859.142(c) of the Preliminary Application.
  - (4) Any Preliminary Apportionment rescinded is subject to accountability pursuant to Section 1859.154(c).
  - (5) The district may request funding for the proposed project again, in accordance with (b)(4), provided this rescinded Preliminary Apportionment is disclosed.

Should the district not submit Form SAB 50-04 pursuant to Section 1859.150 within the time limits of this Section, the district must report the final expenditures on the project on the Form SAB 50-06 to the OPSC within 30 days of the OPSC notification. If the

expenditure report for funds released pursuant to Section 1859.153(a), (b) and/or (c) is not received within the 30-day period, the OPSC will recommend that the Preliminary Apportionment be rescinded and any interest earned on State funds be returned to the State.

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

Reference: Sections 17078.22 and 17078.25, Education Code.

#### Section 1859.148.1. Preliminary Apportionment Time Limit Extension.

A district that has received a Preliminary Apportionment may request a one-year extension of the time limit on the apportionment prescribed in Section 1859.148. The Board shall approve the request provided the criteria in (a) or (b) are met:

- (a) The district has provided evidence of both of the following:
  - (1) The CDE has made a contingent or final approval of the proposed site.
  - (2) The DSA has confirmed that the final plans for the project have been submitted to the DSA for review and approval.
- (b) Other evidence satisfactory to the Board.

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

Reference: Section 17078.25, Education Code.

#### Section 1859.149. Preliminary Apportionment Progress Reporting Requirements.

Until a Preliminary Apportionment is converted to a Final Apportionment, the district shall submit an annual progress report of the project to the OPSC. The reports are due annually, beginning in the twelfth month after the date the Preliminary Apportionment was made.

- (a) The first progress report shall include:
  - (1) A statement as to whether the CDE has made a certification that there is at least one approvable site for the project within the General Location and whether the General Location will serve the Qualifying Pupils assigned to the Preliminary Application to meet the 75 percent requirement in Section 1859.142(c).
  - (2) A copy of the CDE letter supporting the certifications in (a)(1), if appropriate.
  - (3) Progress towards completing the requirements for a Final Apportionment as provided in Education Code Section 17078.25(d).
- (b) Subsequent progress reports shall include the progress made towards completing the requirements for a Final Apportionment provided in Education Code Section 17078.25(d).

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

Reference: Section 17078.25, Education Code.

#### Section 1859.150. Final Apportionment.

The amount of the Final Apportionment is based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Apportionment is submitted and accepted for processing by the OPSC. The Board shall convert the amounts determined below from the Preliminary Apportionment to the Final Apportionment:

- (a) If the Final Apportionment request is equal to or less than the Preliminary Apportionment, the Board shall convert the Preliminary Apportionment to a Final Apportionment. The difference in the Final Apportionment and the Preliminary Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as

appropriate) Critically Overcrowded School Facilities Account. The Final Apportionment shall become the full and final apportionment for the project.

- (b) If the Final Apportionment request is greater than the Preliminary Apportionment, the Board shall:
- (1) Convert the Preliminary Apportionment to a Final Apportionment, if the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account is greater than the difference in the Final Apportionment and the Preliminary Apportionment. The difference in the Final Apportionment and the Preliminary Apportionment shall be transferred from the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account and converted to a Final Apportionment for the project. The combined Final Apportionments shall become the full and final apportionment for the project.
  - (2) Convert the Preliminary Apportionment to a Final Apportionment, if the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account is less than the difference in the Final Apportionment and the Preliminary Apportionment. The balance of the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account shall be converted to a Final Apportionment for the project. Any amount of the Final Apportionment request not converted to a Final Apportionment shall be placed on a Final Apportionment Unfunded List and may be converted to a Final Apportionment at a later date pursuant to the provisions of Section 1859.150.1.

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

Reference: Section 17078.27, Education Code.

#### Section 1859.150.1. Final Apportionment Unfunded List.

Any portion of a Final Apportionment request not converted to a Final Apportionment pursuant to Section 1859.150(b)(2), shall be placed on a Final Apportionment Unfunded List based on the date of the Final Apportionment. If, at a later date, funds become available in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account as a result of rescissions pursuant to Section 1859.148, the Board shall convert the amounts shown on the Final Apportionment Unfunded List to a Final Apportionment based on the oldest date first and subject to the following:

- (a) If the funds available are sufficient to convert the entire amount shown on the Final Apportionment Unfunded List, the amount shown shall be converted and added to the amount initially converted to a Final Apportionment. The total amounts converted shall become the full and final apportionment for the project.
- (b) If the funds available are insufficient to convert the entire amount shown on the Final Apportionment Unfunded List, the district may:
  - (1) Request that the funds available be converted and added to the amount initially converted to a Final Apportionment. The total amounts converted shall become the full and final apportionment for the project.
  - (2) Request that the project not be converted until there are sufficient funds to convert the entire amount shown on the Final Apportionment Unfunded List.

The amounts shown on the Final Apportionment Unfunded List are not subject to any adjustments as prescribed in Section 1859.71.

If the amount shown on the Final Apportionment Unfunded List cannot be converted to a Final Apportionment because there are no funds remaining in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account after all rescissions and final expenditure audits pursuant to Section 1859.148 have been made, the amount converted previously shall become the full and final apportionment for the project.

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

Reference: Section 17078.27, Education Code.

#### Section 1859.151. Preliminary Apportionment District Matching Share Requirement.

Once a Preliminary Apportionment is converted to a Final Apportionment or has funds released pursuant to Section 1859.153, the district will be subject to the district matching share requirement as described in Section 1859.77.1.

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

Reference: Sections 17072.30, 17078.10 and 17078.24, Education Code.

#### Section 1859.152. Eligible Expenditures.

SFP grants provided as the Final Apportionment or pursuant to Section 1859.153 must comply with Education Code Section 17072.35. Additionally, expenditures for construction are eligible only if the construction contract was entered into on or after April 29, 2002.

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

Reference: Sections 17072.35, 17078.10, and 17078.27, Education Code.

#### Section 1859.153. Preliminary Apportionment Fund Release.

Once the provisions in Section 1859.148(a)(1) have been met, a district that meets the following may request an advance release of funds from a Preliminary Apportionment:

- (a) A district that meets the financial hardship criteria in Section 1859.81 is eligible for an amount not to exceed 40 percent of the amount determined in Section 1859.145(a), less any funds pursuant to Section 1859.145(i) and/or (j).
- (b) A district that meets the financial hardship criteria in Section 1859.81 is eligible for an amount, not to exceed the Preliminary Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-08 pursuant to Section 1859.141.
- (c) A district is eligible for an amount, not to exceed the Preliminary Apportionment, for environmental hardship site acquisition pursuant to Section 1859.75.1 after submittal of a Form SAB 50-08 pursuant to Section 1859.141.

Qualified districts may request a separate advance release of funds for the design and for the site acquisition for the same project. A district seeking an advance release of funds pursuant to Section 1859.153(a) and/or (b) must have been approved and maintained financial hardship status pursuant to Section 1859.81. The OPSC will release State funds included in a Preliminary Apportionment pursuant to (a), (b) or (c) to the district after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.148. Once the Preliminary Apportionment is converted to a Final Apportionment pursuant to Section 1859.150, the district may request a release of the remaining funds as prescribed in Section 1859.90.

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

Reference: Sections 17072.30 and 17078.27, Education Code.

#### Section 1859.154. Fund Distribution.

- (a) From the funding made available from Education Code Section 100620(a)(5), the Board shall transfer the amount determined in (3) below, to the SFP New Construction Account after the Preliminary Apportionment(s) are approved by the Board:
- (1) Determine the total value of the Preliminary Applications received pursuant to Section 1859.141(a).
  - (2) Multiply the amount determined in (1) by 15 percent.
  - (3) Subtract the sum of the amounts determined in (1) and (2) from \$1.7 billion. If negative number, the amount is zero.
- (b) From the funding made available from Education Code Section 100820(a)(3), the Board shall transfer the amount determined in (3) below, to the SFP New Construction Account after the Preliminary Apportionment(s) are approved by the Board:
- (1) Determine the total value of the Preliminary Applications received pursuant to Section 1859.141(b).
  - (2) Multiply the amount determined in (1) by 15 percent.
  - (3) Subtract the sum of the amounts determined in (1) and (2) from \$2.44 billion. If negative number, the amount is zero.
- (c) Any funds remaining in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account not needed for purposes of converting projects to a Final Apportionment shall be transferred to the SFP New Construction Account.

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

Reference: Sections 17072.27, 17078.30, 100620 and 100820, Education Code.

#### Section 1859.155. Preliminary Apportionment.

The Board shall approve Preliminary Applications from the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account as follows:

- (a) If the total amount of the Preliminary Apportionment requests received during the application filing period described in Section 1859.141 are equal to or less than the amount in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account, the Board shall approve all Preliminary Apportionment requests.
- (b) If the total amount of the Preliminary Apportionment requests received during the application filing period described in Section 1859.141 are greater than the amount in the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account, the Board shall approve Preliminary Apportionment in accordance with the funding priorities described in Section 1859.146. Any Preliminary Application that cannot be fully approved shall be returned unprocessed to the district.

All funds approved as a Preliminary Apportionment shall be transferred to the Restricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account. Any funds not approved as a Preliminary Apportionment shall be transferred to the Unrestricted Fund within the 2002 (or 2004, as appropriate) Critically Overcrowded School Facilities Account.

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

Reference: Sections 17078.10, 17078.30, 100620 and 100820, Education Code.

**State Allocation Board Implementation Committee  
November 7, 2003**

**Lease Lease-Back Agreements  
(Education Code Section 17406)**

**Issue**

To review the use of Lease Lease-Back Agreements (LLB) for project delivery of facilities funded through the School Facility Program (SFP).

**Background**

Education Code (EC) Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

To date, the Office of Public School Construction (OPSC) has taken no position on when the use of LLB arrangements under EC Section 17406 is appropriate under the assumption that the obligation to determine the appropriate and legitimate use of any contract delivery method allowed under law rests with the school district. The Office has focused instead on providing guidance to those districts using LLB arrangements to insure that the process used is consistent with SFP law and regulations as well as laws relating to the use of the state general obligation bonds.

**Description**

As a result of an increasing number of inquiries to the OPSC regarding issues related to the use of EC Section 17406, the OPSC presented proposed changes to the State Allocation Board's regulations concerning the interface of LLB agreements and the SFP. The presentation, made in September 2003, also included a report to the SAB regarding the use of LLB agreements as a delivery method for projects funded under the SFP. It was apparent that this delivery method was being used or considered by a significant number of districts and the OPSC wished to inform the Board that projects constructed using the LLB method were being presented for funding on consent calendars. The report and the proposed regulation changes were the result of discussions at four separate Implementation Committee meetings.

When the item was presented to the SAB, some members expressed concerns about the effect that widespread use of EC Section 17406 might have on the Public Contract Code (PCC) competitive bidding requirements. The SAB declined to take action on the recommended regulation changes and asked that staff prepare further information relating to the issue for consideration at a future meeting.

## **Competitive Bidding Concerns with LLB**

While some advocates of the use of EC Section 17406 argue that it is less cumbersome than the competitive bidding process and that it allows a team approach to the development of the project, it is important to keep in mind the reasons that competitive bid requirements were added to the PCC. The intent was not to make it harder to complete public works projects, but to ensure that State funds were being used in an efficient and cost-effective manner. The goal of the Legislature in enacting the code was<sup>1</sup>:

1. To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds, and;
2. To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices, and;
3. To eliminate favoritism, fraud, and corruption in the awarding of public contracts

The growing use of EC Section 17406 when project financing is not involved means that significant numbers of projects and significant sums of public funding are not being subjected to the checks and balances of the competitive bid process. Recent interpretations made by some interested in furthering the use of EC Section 17406 are so broad as to make the public contract competitive bid requirements moot, effectively eliminating competitive bidding on all new construction and modernization public school projects whether funded locally or in conjunction with the State program.

## **The Use of EC Section 17406**

### *Lease lease-back agreements as a method of financing*

EC Section 17406, taken in context with the entire article on Leasing Property, provides a financing mechanism available for school districts in the absence of State and/or local funding. A school district may enter into a LLB agreement to acquire or construct a facility without competitive bid when the property on which the project is to be constructed is owned by the district. The construction is to be financed by the developer/lessor and provided to the district through a year-to-year lease.

### *Lease lease back agreements in the SFP*

Under the provisions of the SFP, state funding is provided for 50 percent of a new construction project or 60 percent of a modernization project. The balance of the project costs must be provided by the district through any available local funding source. The district portion is the district "matching share" and must be expended before the notice of completion is filed for the project. Because the state share and the district match are sufficient to completely fund the project, it is unnecessary to enter into a LLB agreement. Therefore, LLB agreements may only be used for new construction or modernization projects under the following circumstances:

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<sup>1</sup> Public Contracts Code, Section 100

- The district does not intend to seek state funding for the project, or
- At the time the LLB agreement is made, state funding for the project is not available.

If the LLB agreement is signed at a time when the project is eligible for state funding and the state funding is available, it will be assumed that the project has been funded from local sources and state funding is not necessary. Applications for the projects will not be accepted.

### *Competitive Selection Processes*

Currently, legislation governing the use of design build processes allows an alternative to competitive bidding by requiring a competitive selection process. In a similar manner, professional services may be also be procured without bidding. Staff believes that the legislation governing the use of LLP agreements should have similar public safeguards.

**ATTACHMENT A**  
Potential Regulatory Amendments  
Implementation of Lease Lease-Back Regulations  
State Allocation Board Implementation Committee Meeting, November 7, 2003

1859.23 SFP Application for Funding of Projects Leased Under the Provisions of Education Code Section 17406.

A district may receive funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided that the district has title to the site and all of the following are met:

- a) The project costs are financed by the developer of the district owned site.
- b) The lease agreement creates no immediate indebtedness for the aggregate installments and confines the district's liability to each annual installment as it falls due.
- c) The lease agreement was signed at a time when state funding was not available for the project.
- d) The lease agreement contains or will contain a purchase option that, when exercised, shall terminate the lease.
- e) The title of all improvements shall vest with the district no later than 180 days after either receiving an adjusted grant apportionment from the Board or filing of the last notice of completion for the project, whichever is later.
- f) State bonds funds including the district's local matching share required pursuant to Section 1859.77.1 or 1859.79 shall not be used for lease or rental payments on the project.
- g) All requirements of Chapter 12.5 have been met including but not limited to compliance with SFP Regulation Section 1859.70 and Labor Code Section 1771.7.

## ATTACHMENT B

### Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13

of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board  
Implementation Committee  
November 7, 2003**

**Financial Hardship Bonded Indebtedness Change**

ISSUE

Senate Bill (SB) 303, Chapter 55, Statutes of 2003 requires changes be made to the current School Facility Program (SFP) regulations as it relates to financial hardship bonded indebtedness.

BACKGROUND

Current SFP regulations require school districts to substantiate that they have insufficient funds to contribute to their projects and show reasonable efforts in generating local revenue for their project's funding share in order to qualify for financial hardship status and receive additional state funding. The current SFP financial hardship regulations provide that school districts may be eligible for financial hardship status, after meeting certain requirements, when all their current outstanding indebtedness, at the time of the request, is at least 60 percent of the district's total bonding capacity.

SB 303 restricts the type of debt that is recognized in meeting the 60 percent of the district's total bonding capacity requirement to only that debt that is issued for the purpose of constructing school facilities for the school district.

DISCUSSION

Based on this change, school districts with other non-school facility debt may have a more difficult time meeting financial hardship criteria and will no longer be able to utilize this debt in meeting the 60 percent reasonable effort requirement.

RECOMMENDATION

Amend the attached regulation section 1859.81 (c) as indicated, present the proposed regulation amendments to the State Allocation Board and begin the regulatory process.

Amend Regulation Section 1859.81 as follows:

Section 1859.81. Financial Hardship.

A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.
- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
  - (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
  - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
  - (3) Subtract (b)(2) from (b)(1).
  - (4) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
  - (5) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.

- (6) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
- (7) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
  - (1) The current outstanding bonded indebtedness of the district issued for the purpose of constructing school facilities, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
  - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
  - (3) It is a County Superintendent of Schools.
  - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
  - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

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

Reference: Sections 17075.10 and 17075.15, Education Code.

**STATE ALLOCATION BOARD**

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



**Date:** November 21, 2003

**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 Friday, December 5, 2003 (9:30 am - 3:30 pm) at 1500 Capitol Avenue in conference room(s) 72.148C and 72.149B (Sacramento, CA).

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Charter Schools Facilities Program (SB 15)  
*Discussion of eligibility determination, per-pupil project caps, site acreage limitations and other Charter program issues.*
3. SFP Joint Use Program (SB 15)  
*Discussion of revisions to Type I-II, building reconfiguration and partner contribution for the SFP Joint Use Program.*
4. Lease Lease-Back  
*Review of previous discussions, including the September item to the SAB, and presentation of OPSC position on the use of EC 17406.*

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 Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock".

BRUCE B. HANCOCK  
Chairperson

BBH:LM:pj

**STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
December 5, 2003**

**CHARTER SCHOOL FACILITY PROGRAM  
REGULATION AMENDMENTS**

**Background:**

The Charter School Facility Program, created through Assembly Bill (AB) 14 allowed for the allocation of \$100 million to provide facilities to charter schools. On July 2, 2003 the State Allocation Board (SAB) made the first preliminary apportionments for the program to six charter schools. After the first allocation, the SAB and the California School Finance Authority (CSFA) presented a joint report to the Legislature detailing the implementation of the program, description of the projects funded, and recommendations for statutory change. Senate Bill (SB) 15 (Alpert) contains some of the recommendations as well as other changes to the program.

**Total Project Funding Cap Discussion:**

To determine the funding of the project, the costs would be divided into construction costs and site acquisition costs, as shown below:

PRELIMINARY APPORTIONMENT DETERMINATION	
<i>Construction Costs</i>	<i>Site Acquisition Costs</i>
<ul style="list-style-type: none"> <li>• Base Grant</li> <li>• Multi-level Construction</li> <li>• Site Development</li> <li>• Small Size Project</li> <li>• Urban Allowance</li> <li>• Geographic Percentage Factor</li> <li>• Labor Compliance Grant</li> <li>• Inflator Factor</li> </ul>	<ul style="list-style-type: none"> <li>• Site purchase</li> <li>• Other Site Costs (appraisal, escrow, survey, site testing, CDE review/approvals and preparation of POESA and PEA)</li> <li>• Inflator Factor</li> </ul>
	<p><b>Pools</b> (access at Final Apportionment)</p> <ul style="list-style-type: none"> <li>• Hazardous Material Clean-up</li> <li>• Relocation and DTSC fees</li> </ul>

The purpose of separating the above amounts is to differentiate the costs between the construction costs subject to the project funding cap and the site costs that will be exclusive of the cap under the guidelines of the School Facility Program.

*Proposal:*

The funding cap derived proposes two limiters on the projects: a limit on the number of grants that may be requested for a project and a reduction of the funding amount equal to 75% of the eligible construction costs for the project. Rather than providing a set dollar figure that all projects are held to regardless of location, building costs, etc., that may cause an inequity for certain regions of the State. The project-funding cap under this proposal is dependent on the specific project.

*Limit 1 - Pupil Grant Request*

An applicant would be limited to the amount of pupil grants that may be requested for the project depending on the grade level of the pupils being served, as follows:

- Elementary – no more than 350 pupils
- Middle – no more than 450 pupils
- High – no more than 600 pupils

### *Limit 2 - Funding Reduction*

An applicant may request allowances for multi-level, urban, geographic, small size, provided the project is eligible for these additional grants. The State funding provided will only represent 75 percent of the eligible items identified as construction costs. Therefore, the preliminary apportionment would consist of 75 percent of the construction costs and 100 percent of the site purchase and other site costs. Any relocation or hazardous material fees will not be provided at the preliminary apportionment, but would be provided from the established funding pools at the time of final apportionment.

### *Methodology for Creating Funding Set Asides*

At this point, without being able to forecast the type or number of applications that will be submitted for the upcoming filing period, it would be difficult to gage a dollar figure to set aside from the \$300 million to create a pool for hazardous material and another for relocation costs. Any figure proposed would be a best guess. Therefore, we propose the following methodology to create the two separate pools of funds.

#### 1. Hazardous Material Clean-up Funding

Applicants would still be required to indicate on the application if toxic funding is being requested for the project; however, it would not be part of the preliminary apportionment.

#### *Process:*

1. The purchase value of all projects that requested hazardous material clean up would be totaled.
2. The above total would be multiplied by the percentage that hazardous material costs represent in relation to the purchase value. Note: still running reports to determine this value based on historical SFP data.
3. The product would provide the dollar value to set aside from the \$300 million.

#### 4. Relocation/DTSC Funding

See above process but instead of hazardous material we would be looking at historical data in relation to DTSC and relocation costs.

### **RECOMMENDATION:**

The OPSC recommends adopting the project-funding cap outlined above as well as the two separate pools for DTSC costs and relocation expenses to satisfy the requirements of establishing funding caps in SB 15. (See Attachment A and A1 for sample projects.)

### **Other Issues Related to Project Funding Caps:**

The following were discussion items Staff agreed to review from the November 7, 2003 meeting and the proposed resolution.

- Recommended size for charter schools - There was a proposal to set the recommended site size at 40 percent of a "traditional" school, with the option to increase to 50 percent if a site is not available or an approvable site from CDE is not found at the time the preliminary apportionment application is submitted. After further discussions with CDE, we are recommending that the reduction to the recommended site size be set at 50 percent of the recommended site size. This will be the maximum amount allowed for both at the preliminary apportionment as well as the final apportionment conversion.

- Urban Allowance - With the revised acreage numbers based on the California Department of Education's (CDE) recommendation, which is a recommendation for Charter School projects, the urban allowance would be based on the "new" recommended site size. Concern was expressed that this would lessen the urban allowance even though the district still had the added cost of building on a small site. After further review, we are recommending that the urban allowance not be based on the "new" recommended site size but that it be based on 100% of what the recommended site size is for a traditional school.
- Inflation Factor - A proposal to reduce the inflation factor to six percent, which would equate out to three percent for the first and second year and not provide an increase for the third and fourth years was discussed. The intent was to encourage conversion of projects faster. After further review and discussions from last month's Implementation Committee meeting, we recommend to use the previous calculation of the inflation factor which projects an amount over the next four years.

**Additional Discussion Items:**

- There was a discussion as to whether we could give additional preference or some type of priority points to those applicants that opt to not take the entire lease amount. After further discussions with our legal counsel, the law is very specific as to what categories we can give preference and does not give us the option of including other factors.
- There was a previous discussion regarding new construction eligibility from the October Implementation Committee meeting that we did not get to at the November meeting. As a follow-up, if a district does not have established new construction eligibility, there is not a mechanism to require districts to establish new construction eligibility and therefore a charter would not be eligible to make an application for facilities funding. If the charter school would like to pursue an application and eligibility has not been established, we would encourage the charter school to work with the school district at the local level through the school board and the local community, and have the issue resolved locally.

**Attachment B**  
**Summary of Revised Charter School Facility Program Regulations**  
SAB Implementation Committee, December 5, 2003

<b>Section</b>	<b>Current Practice</b>	<b>Proposed Change</b>	<b>Justification for Change</b>
DEFINITIONS "CHARTER SCHOOL GENERAL LOCATION" Reg Section 1859.2	In determining a median cost for site acquisition, the general location was based on the Critically Overcrowded Schools (COS) Program using source schools.	Create new definition "Charter School General Location" to mean a three-mile radius from the present or proposed location of the Charter School project as identified on the application.	The Charter School program differs from the COS that it does not use source schools. This definition will define the area to be used for the median cost calculation and provide a more accurate assessment of the real estate transactions in and around the proposed general location.
DEFINITIONS "FINANCIALLY SOUND" Reg Section 1859.2	n/a	Add reference to California School Finance Authority (CSFA) regulations.	Clarification language to properly reference both sets of regulations.
DEFINITIONS "LARGE CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is greater that 351.	A school in which the enrollment is greater than 351.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "MEDIUM CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is between 101 to 350.	A school in which enrollment is between 176-350.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "REGION 2" Reg Section 1859.2	Tulare county is in Region 3.	Move Tulare county into Region 2.	Tulare was inadvertently left in Region 3 when the distribution was originally done and demographically should have been placed in Region 2 from the onset of the program.
DEFINITIONS "SMALL CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is not more than 100.	A school in which enrollment is mot more than 175.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
PRELIMINARY APPORTIONMENT ELIGIBILILTY CRITERIA Reg Section 1859.162	n/a	New legislation requires that prior to the end of the filing period that the applicant must have a charter approved or a material revision to their existing charter approved for that specific school in which they are applying. Prior to the submission of the Preliminary Charter School Application that the above must be in place. This will be incorporated into the Preliminary Charter School Application form and the applicant will be required to report the date of the charter approval or of the material revision.	As required by legislation – SB 15

Section	Current Practice	Proposed Change	Justification for Change
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The preliminary apportionment calculation originally referenced the calculation used in the critically overcrowded program.	The preliminary apportionment calculation has been incorporated into the charter school section of the regulations.	Clarification and ability to modify certain areas of the calculations which are specific to the charter school program.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION "SMALL SIZE PROJECT" Reg Section 1859.163.1 (e)	This allowance is called the Small New School Allowance and is provided if the project meets the requirements of Section 1859.83(c).	Change to allow the charter school to request a small size project, which is a project that will house no more than 200 pupils, as provided in 1859.83(b).	The basis for this change is because the New School Allowance was intended for projects that were going to be built in phases, but needed funding to provide the core facilities up front. When subsequent applications come in to add classrooms, the grant is offset. Due to the nature of the charter school program we don't envision this happening and feel that the small size project is more applicable.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION "USEABLE ACRES" Reg Section 1859.163.1(f)(2)	In the last round, useable acreage was determined by using CDE recommended site size as established for the COS program.	Per the new legislation, CDE has provided new numbers which are exactly half of what is used in the COS program in order to limit the amount of acreage for which each applicant can apply.	As required by legislation – SB15
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The Preliminary Charter School Application currently includes a certification for the Labor Compliance Program.	Regulation language has been included to incorporate the Labor Compliance Program grants.	At the July 2, 2003 State Allocation Board meeting the grants for the LCP were approved and we have incorporated the regulation language to include this reference.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT SITE ACQUISITION VALUE Reg Section 1859.163.2 (3)(b)	Costs for hazardous material clean up are automatically calculated in the site acquisition costs and are provided at 150% of the appraisal or median cost.	Edits will be made to the form to allow the applicant to include a lesser amount for toxic remediation.	Cases may exist where an applicant knows that they will not need the 150% amount for clean up.
CALCULATION OF PREFERENCE POINTS Reg Section 1859.164.1 (a) and (b)	n/a	We have adjusted the low-income scales and the overcrowded scales to add more ranges.	This adjustment was done to allow for more variance and to avoid having projects end up with the same preference points.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT FUND RELEASE Reg Section 1859.164.2	n/a	Regulations have been written to allow for advanced release of funds for separate design equal to 40 percent of the total project cost and/or an advance fund release for site acquisition.	As required in legislation – SB 15

Section	Current Practice	Proposed Change	Justification for Change
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Incorporate the language for the unrestricted Fund to include the 2004 Charter School Facilities Account.	As required by legislation – SB 15
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2002 Charter School Facilities Account or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 that were not funded due to insufficient funds shall be used by the Board for other Charter School facility projects.	Per SAB Action on July 2, 2003 and SB 15.
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2004 Charter School Facilities Account shall be used by the Board for other Charter School facility projects.	As required by legislation – SB 15

## ATTACHMENT C

**PROPOSED AMENDMENTS TO THE  
CHARTER SCHOOL FACILITY PROGRAM  
SB 15 AND OTHER REGULATORY AMENDMENTS**

## Section 1859.2. Definitions.

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

...

“Authority” shall have the meaning set forth in Education Code Section 17078.52(c)(1).

...

“Charter School” shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

...

“Charter School General Location” shall mean a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

...

“Classroom-Based Instruction” shall have the meaning set forth in Education Code Section 47612.5(e)(1).

...

“Final Charter School Apportionment” shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

...

“Financially Sound” shall have the meaning set forth in Education Code Section 17078.52~~(e)~~ (d)(4) and Title 4, California Business Regulations commencing with Section 10152, et al.

...

“Form SAB 50-09” means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), which is incorporated by reference.

...

“Large Charter School” shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Low-income” shall be the percentage of pupils deemed to be eligible for free/reduced lunch as identified in the Free and Reduced Price Meals data on file at the CDE. ~~those charter schools in which a percentage of the pupils receive free or reduced meals according to the CDE.~~

...

“Medium Charter School” shall be defined as a school with an enrollment of ~~101~~ 176 pupils to 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Non-profit entity” means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

...

“Overcrowded School District” for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhouseed pupils.

....

“Preliminary Charter School Application” means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

“Preliminary Charter School Apportionment” means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

....

“Region One” shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

“Region Two” shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

“Region Three” shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, ~~Tulare~~, and Ventura.

“Region Four” shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

...

“Rural Area” shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

...

“Small Charter School” shall be defined as a school with an enrollment of not more than ~~400~~ 175 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

“Suburban Area” shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

...

“Urban Area” shall be as a school with a locale code of one as classified by the NCES.

...

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

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

## **Article 14. Charter School Facilities Program**

Section 1859.160. General.

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.50 through 17078.64 for new construction shall complete and file a Form SAB 50-09.

After the Board has approved a Preliminary Charter School Apportionment for a Preliminary Charter School Application submitted pursuant to this section, a charter school seeking an advance release of funds for site acquisition pursuant to Section 1859.164.2 (a) or (b), shall be required to submit an additional Form SAB 50-09, to the OPSC, to determine eligible site acquisition costs. A Charter School seeking an advance release of funds for design, engineering, and other pre-construction project costs pursuant to Section 1859.164.2 (a), shall not be required to submit an additional Preliminary Charter School Application.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

#### Section 1859.161. Preliminary Charter School Application Submittals.

A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003, or during a period of 120 calendar days beginning 10 days after an election authorizing additional funding.

The Board may establish additional application filing periods as needed.

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

Reference: Section 17078.53, Education Code.

#### Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all of the following conditions are met: the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level of project being proposed in the Charter School application.

- (a) the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level(s) being proposed in the Preliminary Charter School Application; and.
- (b) prior to submission of the Preliminary Charter School Application the requirements of EC Section 17078.53(d) are met.

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

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

#### Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. ~~The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1.~~ In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

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

Reference: Sections 17078.52 and 17078.53, Education Code.

#### Section 1859.163.1. Preliminary Charter School Apportionment Determination.

The Preliminary Charter School Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Charter School Application:
  - (1) \$5,226.82 for each elementary school pupil.
  - (2) \$5,533.65 for each middle school pupil.
  - (3) \$7,225.94 for each high school pupil.
  - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

- (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.163.2.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
  - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
  - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.
  - (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.
- (e) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to 1859.83(b)(1) or (b)(2), as appropriate.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
  - (1) The Charter School has requested an increase for multilevel construction pursuant to (b) above.
  - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size for Charter Schools determined by multiplying the sum of the pupil grants requested on Form SAB 50-09, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-09, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-09.
  - (3) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).
- (h) For all Preliminary Charter School Applications received after March 31, 2003 an amount equal to the sum of the amounts determined in (a) through (g) multiplied by a factor determined as follows:
  - (1) Divide the January Class B Construction Cost Index in effect at the time of Preliminary Charter School Apportionment by the January Class B Construction Cost Index in effect four years prior to the Preliminary Charter School Apportionment. Round to four decimal places.
  - (2) Subtract 1 from the quotient in (1). Round to two decimal places.

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71. The Charter School may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

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

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Charter School Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
- (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.
  - (2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed useable acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
- (1) 21 percent of the value determined in (a).
  - (2) The sum of the following:
    - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
    - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
  - (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.
- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2), above.

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

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points based on the percentage of pupils at the Charter School or school district where the Charter School is or will be located that receive/free reduced lunch, whichever is higher. if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a Financially Sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for the district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
5-15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28
74-82%	32
83-91 <u>92%</u>	36
<del>92-100%</del> <u>93</u>	<del>40</del> <u>36.5</u>
<u>94</u>	<u>37</u>
<u>95</u>	<u>37.5</u>
<u>96</u>	<u>38</u>
<u>97</u>	<u>38.5</u>
<u>98</u>	<u>39</u>
<u>99</u>	<u>39.5</u>
<u>100</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment (round up) and multiplying the product by 100. Use the following sliding scale to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
2-5%	4
6-9%	8
10-13%	12
14-17%	16
18-21%	20
22-27%	24
28-34 %	28
35-41%	32
42-50%	36
51% and above	40

Percentage Overcrowded	Preference Points Assigned
<u>2-9%</u>	<u>4</u>
<u>10-13%</u>	<u>8</u>
<u>14-16%</u>	<u>12</u>
<u>17-19%</u>	<u>16</u>
<u>20-22%</u>	<u>20</u>
<u>23-25%</u>	<u>24</u>
<u>26-33 %</u>	<u>28</u>
<u>34-41%</u>	<u>32</u>
<u>42-49%</u>	<u>36</u>

50% and above

40

- (c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 20 preference points.

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

Reference: Section 17078.56, Education Code.

#### Section 1859.164.2 Preliminary Charter School Apportionment Fund Release.

A Charter School may request an advance release of funds from a Preliminary Charter School Apportionment that was funded from the 2004 Charter School Facilities Account, for either of the following:

- (a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a), (b), (d), (e), (f), and (g).
- (b) A separate advance release of funds for site acquisition for an amount, not to exceed the Preliminary Charter School Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-09 pursuant to Section 1859.160.

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial sound status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Charter School Preliminary Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the Charter School may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: 17070.35 and 17078.64, Education Code

Reference: 17078.53, Education Code

#### Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
- (1) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary

Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.

- (2) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Fund in the 2002 Charter School Facilities Account pursuant to this Subsection (a), and not used under (b)(1), or (b)(2), or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 presented to the Board but were not funded due to insufficient funds, shall be used by the Board for other Charter School facility projects.

Any funds deposited into the Unrestricted Fund in the 2004 Charter School Facilities Account pursuant to Subsection (a), and not used under (b)(1) or (b)(2), shall be used by the Board for other Charter School facility projects.

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

Reference: Section 17078.52, Education Code.

#### Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

~~Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment,~~ The Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

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

Reference: Section 17078.54, Education Code.

#### Section 1859.169. Eligible Expenditures.

Expenditures made with the Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

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

Reference: Sections 17078.52, Education Code.

#### Section 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50-09 on its own behalf pursuant to this Article shall comply with the reporting requirements of Sections 1859.100, 1859.101, 1859.102, and 1859.106.

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

Reference: Section 17078.54, Education Code.

Section 1859.171. Use of Facility.

Once a Charter School is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, the school district where the Charter School is physically located can either:

- (a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
  - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
  - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- (b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

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

Reference: Section 17078.62, Education Code.

## TOTAL PROJECT COST CAP EXAMPLES ATTACHMENT A

	URBAN	RURAL/ SUBURBAN	URBAN	RURAL/ SUBURBAN	URBAN	RURAL/ SUBURBAN
<b>Project Details</b>	<b>K-6</b>		<b>7-8</b>		<b>9-12</b>	
Pupil Grants	350	350	450	450	600	600
Classrooms	14	14	17	17	22	22
Proposed Acres	1	3.1	1.5	4.8	2.4	7.4
Recommended Site Size* (Charter Schools)	3.1	3.1	4.8	4.8	7.4	7.4
Recommended Site Size** (Traditional Schools)	6.2	6.2	9.5	9.5	14.8	14.8

### CALCULATIONS

Base Grant	\$2,054,500.00	\$2,054,500.00	\$2,641,500.00	\$2,641,500.00	\$3,522,000.00	\$3,522,000.00
Multi-Level Grant (12%)	\$246,540.00	\$0.00	\$316,980.00	\$0.00	\$422,640.00	\$0.00
Urban/Security (Based on 100% of recommended site size)	\$1,359,820.00	\$0.00	\$1,757,580.00	\$0.00	\$2,327,013.58	\$0.00
Site Development Costs (using \$70,000/acre)	\$70,000.00	\$217,000.00	\$105,000.00	\$336,000.00	\$168,000.00	\$518,000.00
<b>Subtotal 1</b>	<b>\$3,730,860.00</b>	<b>\$2,271,500.00</b>	<b>\$4,821,060.00</b>	<b>\$2,977,500.00</b>	<b>\$6,439,653.58</b>	<b>\$4,040,000.00</b>

Geographic Factor (15%)	\$0.00	\$340,725.00	\$0.00	\$446,625.00	\$0.00	\$606,000.00
<b>Subtotal 2</b>	<b>\$0.00</b>	<b>\$2,612,225.00</b>	<b>\$0.00</b>	<b>\$3,424,125.00</b>	<b>\$0.00</b>	<b>\$4,646,000.00</b>

11% Inflater Factor	\$410,394.60	\$287,344.75	\$530,316.60	\$376,653.75	\$708,361.89	\$511,060.00
<b>Subtotal 3</b>	<b>\$4,141,254.60</b>	<b>\$2,899,569.75</b>	<b>\$5,351,376.60</b>	<b>\$3,800,778.75</b>	<b>\$7,148,015.47</b>	<b>\$5,157,060.00</b>

LCP	\$24,949.77	\$20,878.60	\$30,516.33	\$23,682.41	\$38,651.27	\$29,761.25
Total State Share	\$4,166,204.37	\$2,920,448.35	\$5,381,892.93	\$3,824,461.16	\$7,186,666.74	\$5,186,821.25
<b>Total Project Cost</b>	<b>\$8,332,408.74</b>	<b>\$5,840,896.70</b>	<b>\$10,763,785.86</b>	<b>\$7,648,922.32</b>	<b>\$14,373,333.49</b>	<b>\$10,373,642.50</b>

<b>75% of Total Project Cost</b>	<b>\$6,249,306.56</b>	<b>\$4,380,672.53</b>	<b>\$8,072,839.40</b>	<b>\$5,736,691.74</b>	<b>\$10,780,000.12</b>	<b>\$7,780,231.88</b>
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\* Acreage is based on 50% of Recommended Site Size.

\*\* Acreage is based on 100% of the traditional Recommended Site Size.

NOTE: - The additional grants used in these calculations are for sample purposes only. The actual additional grants will vary from project to project.

- These calculations are exclusive of site acquisition amounts.

## TOTAL PROJECT COST CAP EXAMPLES ATTACHMENT A1

	URBAN	RURAL/ SUBURBAN	URBAN	RURAL/ SUBURBAN	URBAN	RURAL/ SUBURBAN
<b>Project Details</b>	<b>K-6</b>		<b>7-8</b>		<b>9-12</b>	
Pupil Grants	200	200	300	300	400	400
Classrooms	8	8	17	17	22	22
Proposed Acres	.6	1.8	1.5	3.2	2.4	5.0
Recommended Site Size* (Charter Schools)	1.8	1.8	3.2	3.2	5.0	5.0
Recommended Site Size** (Traditional Schools)	3.6	3.6	6.3	6.3	9.9	9.9

### CALCULATIONS

Base Grant	\$1,174,000.00	\$1,174,000.00	\$1,761,000.00	\$1,761,000.00	\$2,348,000.00	\$2,348,000.00
Multi-Level Grant (12%)	\$140,880.00	\$0.00	\$211,320.00	\$0.00	\$281,760.00	\$0.00
Urban/Security (Based on 100% of recommended site size)	\$768,826.77	\$0.00	\$1,007,454.01	\$0.00	\$1,332,320.94	\$0.00
Site Development Costs (using \$70,000/acre)	\$42,000.00	\$126,000.00	\$105,000.00	\$224,000.00	\$168,000.00	\$350,000.00
Small Size Project	\$46,960.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Subtotal 1</b>	<b>\$2,172,666.77</b>	<b>\$1,300,000.00</b>	<b>\$3,084,774.01</b>	<b>\$1,985,000.00</b>	<b>\$4,130,080.94</b>	<b>\$2,698,000.00</b>
Geographic Factor (15%)	\$0.00	\$195,000.00	\$0.00	\$297,750.00	\$0.00	\$404,700.00
<b>Subtotal 2</b>	<b>\$0.00</b>	<b>\$1,495,000.00</b>	<b>\$0.00</b>	<b>\$2,282,750.00</b>	<b>\$0.00</b>	<b>\$3,102,700.00</b>
11% Inflation Factor	\$238,993.34	\$164,450.00	\$339,325.14	\$251,102.50	\$454,308.90	\$341,297.00
<b>Subtotal 3</b>	<b>\$2,411,660.11</b>	<b>\$1,659,450.00</b>	<b>\$3,424,099.15</b>	<b>\$2,533,852.50</b>	<b>\$4,584,389.84</b>	<b>\$3,443,997.00</b>
LCP	\$19,317.31	\$17,489.18	\$22,514.71	\$19,708.33	\$26,988.19	\$22,576.39
Total State Share	\$2,430,977.42	\$1,676,939.18	\$3,446,613.86	\$2,553,560.83	\$4,611,378.03	\$3,466,573.39
<b>Total Project Cost</b>	<b>\$4,861,954.85</b>	<b>\$3,353,878.36</b>	<b>\$6,893,227.72</b>	<b>\$5,107,121.66</b>	<b>\$9,222,756.07</b>	<b>\$6,933,146.78</b>
<b>75% of Total Project Cost</b>	<b>\$3,646,466.14</b>	<b>\$2,515,408.77</b>	<b>\$5,169,920.79</b>	<b>\$3,830,341.25</b>	<b>\$6,917,067.05</b>	<b>\$5,199,860.09</b>

\* Acreage is based on 50% of Recommended Site Size.

\*\* Acreage is based on 100% of the traditional Recommended Site Size.

NOTE: - The additional grants used in these calculations are for sample purposes only. The actual additional grants will vary from project to project.

- These calculations are exclusive of site acquisition amounts.

SB 15  
 CHARTER SCHOOL FACILITIES PROGRAM  
 TOTAL PROJECT COST CAP  
 ATTACHMENT A1

This sample uses general numbers of an elementary, middle, and high school charter.

Project Details	Type of Project		
	K-6	7-8	9-12
Pupil Grants	350	450	500
Classrooms	14	17	19
Acres*	3.1	4.75	6.18
<b>Base Grant</b>	\$2,054,500.00	\$2,796,300.00	\$4,058,000.00
Site Development Costs (using \$70,000/acre)	\$217,000.00	\$332,500.00	\$432,600.00
<b>Subtotal 1</b>	<b>\$2,271,500.00</b>	<b>\$3,128,800.00</b>	<b>\$4,490,600.00</b>
11% Inflater Factor**	\$249,865.00	\$344,168.00	\$493,966.00
<b>Subtotal 2</b>	<b>\$2,521,365.00</b>	<b>\$3,472,968.00</b>	<b>\$4,984,566.00</b>
Labor Compliance Program Grant	\$19,668.37	\$22,666.20	\$28,829.00
Total State Share	\$2,541,033.37	\$3,495,634.20	\$5,013,395.00
<b>Total Project Cost</b>	<b>\$5,082,066.74</b>	<b>\$6,991,268.40</b>	<b>\$10,026,790.00</b>

\*The acreage amounts have been calculated using the new recommended site size.

\*\*The inflater factor is estimated until the class B index is available in January 2004.

STATE ALLOCATION BOARD  
IMPLEMENTATION COMMITTEE  
December 5, 2003

CHANGES TO THE JOINT-USE PROGRAM (SB 15)

BACKGROUND

The School Facility Program (SFP) Joint-Use Program under Proposition 47 provided for a maximum of \$50 million dollars to fund qualifying joint-use projects at the July 2003 State Allocation Board (SAB) meeting. Eighteen joint-use projects, representing a cumulative State apportionment of \$16.1 million, were presented for apportionment at the July 2003 SAB meeting. The remaining \$33.8 million in joint-use funds will be made available for apportionment for qualifying projects at the July 2004 SAB meeting.

The SAB directed staff to prepare a report to determine how the Office of Public School Construction could increase participation in the SFP Joint-Use Program, which was presented to the August 2003 SAB meeting with the following findings:

- Many districts stated that they were unable to find joint-use partners that were willing or able to provide the 50 percent match for eligible project costs.
- Under current law, Type I and II joint-use projects must be submitted as a new construction application. Many districts do not have the need for new classrooms, but do have a need for a joint-use facility.
- Although many districts would like to participate in a joint-use program, an existing building is located on the joint-use facility's desired location.
- Because no Type I joint-use applications were received, a recommendation was made to combine Type I and II into a new Type I category.

In an effort to address the concerns of school districts and to encourage participation in the SFP Joint-Use Program, the Legislature enacted changes to the Program under Senate Bill (SB) 15.

DISCUSSION

ALTERATIONS TO TYPES I, II AND III

The three categories of projects developed in the original SFP Joint-Use Program have been restructured into two categories as follows:

**Type I:** The previous Type I and Type II categories have been combined to create a new Type I. The new Type I is for a project that proposes to increase the size, create excess cost, or both of a gymnasium, library, multipurpose room, childcare or teacher education facility that is part of a new construction project.

**Type II:** The new Type II allows for the construction of new joint-use facilities or the reconfiguration of existing school buildings to provide for a teacher education facility, multipurpose room, gymnasium, library, or childcare facility.

Tying the new Type II joint-use project to a new construction project is no longer required. A Type II project to construct new school facilities can be submitted as a stand alone project with California Department of Education (CDE) approved preliminary plans, or as a project to reconfigure existing school buildings.

### Notes on Type I and II:

- The requirement for at least one of the joint-use partners to be an institution of higher education no longer applies to any of the types.
- Applications for facilities for pupil academic achievement are no longer acceptable under the new law. However, If a project proposes to either construct new school buildings or reconfigure existing school buildings to provide for a pupil academic achievement facility, and the plans and specifications are accepted by the Division of State Architect (DSA) for review and approval by January 1, 2004, the application may be filed.

### RECONFIGURATION DEFINED AND PROPOSED IMPLEMENTATION

The ability to reconfigure an existing school building is a new concept to the Joint-Use program. The OPSC is proposing the following scenarios for the purposes of discussion. Reconfiguration, for the purposes of the joint-use program, means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building.

Reconfiguring an existing school building must not reduce the District's capacity or displace another Minimum Essential Facility (MEF). An inadequate MEF must not be constructed to replace a reconfigured MEF. The following three are examples of how a district can reconfigure existing school buildings as a Type II project.

- The district does not have a library in an existing school. By reconfiguring the layout of one of the buildings on the campus, it is possible to create a new library without losing classroom capacity or displacing another 'minimum essential facility.'
- The district has an inadequate multipurpose room. By reconfiguring the layout of one of the buildings on campus, a new, adequate multipurpose can be created however some classrooms in the existing building are lost. The district uses some of the joint-use funds to replace the classrooms either in a new facility or by reconfiguring another building. The joint-use funds would be used for the replacement area, as well as, the reconfiguration, subject to OPSC legal counsel approval.
- The district has an inadequate multipurpose room in an existing building on campus. By reconfiguring the existing space and adding some new square footage, the multipurpose room can be made adequate.

If the Joint-Use Project is on a campus which is also eligible for modernization funding, the modernization funding may be used to fund the replacement facilities.

In any case involving the replacement of lost capacity due to the reconfiguration of an existing building, the replacement must be a part of the plans submitted in support of the Joint-Use Application and must occur concurrently.

### JOINT-USE PARTNER CONTRIBUTION

The state and local contribution to a joint-use project remains 50/50. However, the Joint-Use Partner contribution has been reduced to a minimum of 25% of the eligible joint-use project costs with the remaining local contribution coming from any other source available to the District. The state share will always be a maximum of 50% of the eligible project costs. If the District has passed a bond which specifies that the monies are to be used specifically for the purpose of the joint-use project, then the District can opt to pay the full 50% local share of eligible costs. Financial Hardship assistance towards the matching share for Financial Hardship districts will not be provided by the State.

A portion of the proposed Regulations to implement these changes are shown in Attachment A.

ALTERATIONS TO TYPES I, II, AND III

Type	Description	Type of plans	Facilities allowed
I	Increase Size, Extra Cost or Both – Tied to new construction project	DSA approved Final Plans	Gym, Library, Multipurpose, Childcare, and Teacher Education
II	A) To reconfigure existing buildings	CDE approved Preliminary Plans or DSA approved Final Plans	Gym, Library, Multipurpose, Childcare, Teacher Education and Pupil Academic Achievement*.
	B) To construct new school buildings	CDE approved Preliminary Plans or DSA approved Final Plans	

\* Pupil Academic Achievement will be grandfathered in if plans are accepted by DSA for review and approval prior to January 1, 2004.

A) Joint-Use funds would be used for the reconfiguring of an existing building into a joint-use facility and would be part of an SFP qualifying modernization project. Modernization funds would be used for the replacement of like kind to take the place of the reconfigured facility.  
(2 separate projects – 2 separate applications – 1 or 2 sets of plans.)

Or,

Joint-Use funds would be used for the reconfiguration of the existing building into a joint-use facility, *as well as*, the replacement of like kind to take the place of the reconfigured facility.  
(1 project – 1 application – 1 set of plans.)

B) Joint-Use funds would be used to construct a new joint-use facility.

## Comparison of Old and New Joint-Use Projects

Current Practice			
Type I	Type II	Type III	Facility Type
	X	X	Multi-purpose room (includes food service)
	X	X	Gymnasium (includes shower/locker)
	X	X	Library
X		X	Teacher Education or Pupil Academic Achievement**
X	X	X	Childcare

\*Available only if there is no multipurpose room or the existing multipurpose room is inadequate on the campus and the Joint-Use Agreement indicates gymnasium space rather than a multipurpose room.

\*\*Subject to the CDE approval.

Proposed Changes		
Type I	Type II	Facility Type
X	X	Multi-purpose room (includes food service)
X	X	Gymnasium (includes shower/locker)
X	X	Library
X	X	Teacher Education**
	X	Pupil Academic Achievement***
X	X	Childcare

\*Available only if there is no multipurpose room or the existing multipurpose room is inadequate on the campus and the Joint-Use Agreement indicates gymnasium space rather than a multipurpose room.

\*\* Subject to the CDE approval.

\*\*\*Subject to the CDE approval. Plans and specifications must be accepted by the DSA for review and approval prior to January 1, 2004.

## ATTACHMENT A

### PROPOSED AMENDMENTS TO THE SFP JOINT-USE PROGRAM SB15 AND OTHER REGULATORY AMENDMENTS

#### Section 1859.2. Definitions.

“Reconfigure” for the purposes of the joint use program means staying within the confines of the footprint and structural capabilities of the existing building.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17009.5, Education Code.

#### Section 1859.73.1. New Construction Additional Grant for Project Assistance.

Excluding Joint-Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

For Type III Joint-Use Projects, to construct new school buildings, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

The amount(s) shown will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.10, Education Code.

#### Section 1859.81. Financial Hardship.

Except for Joint-Use Projects, a district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.

- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
  - (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
  - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
    - (1) Subtract (b)(2) from (b)(1).
    - (2) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
    - (3) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
    - (4) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
    - (5) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
  - (1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
  - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
  - (3) It is a County Superintendent of Schools.
  - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
  - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

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

Reference: Sections 17075.10 and 17075.15, Education Code.

**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:

- (a) Excessive Cost due to Geographic Location.  
A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for the sum of the Excessive Cost Hardship Grant(s) determined by multiplying the indicated percentage factor shown in the Geographic Percentage Chart below by each of the following amounts:
  - (1) The New Construction Grant and the Modernization Grant.
  - (2) The funding provided by Sections 1859.71.2, 1859.71.3, 1859.72, 1859.73, 1859.73.2, 1859.78.4, 1859.78.5, 1859.82(a) and (b), 1859.83(b), (c), (d) and (f) and 1859.125(a).

**GEOGRAPHIC PERCENTAGE CHART**

COUNTY	% FACTOR	DESCRIPTION
Alpine	5	The entire county.

COUNTY	% FACTOR	DESCRIPTION
Amador, Eastern Part	5	All of Amador County except the portion lying west of a line drawn five miles east of, and paralleling State Highway 49.
Butte, Eastern Part	5	All of Butte County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 99.
Calaveras, Eastern Part	5	All of Calaveras County except that portion lying west of State Highway 49.
Del Norte	5	The entire county.
El Dorado, Eastern Part	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to State Highway 88.
El Dorado	5	El Dorado County except the eastern part and the following areas: <ul style="list-style-type: none"> <li>• West of a line drawn six miles east of and paralleling State Highway 49.</li> <li>• Within five miles of either side of U.S. highway 50 from the western county line to a point on the eastern limit of the community of Pollock Pines.</li> <li>• West of a line drawn three miles easterly from and paralleling a certain county road described as the Pleasant Valley Road which connects the community of Aukum with Diamond Springs and with the city of Plymouth.</li> </ul>
Fresno, Eastern Part	5	All of Fresno County lying east of a line drawn ten miles east of, and paralleling the west boundary of the Sierra National Forest.
Glenn, Western Part	5	All of Glenn County except that portion lying east of a line drawn ten miles west of, and paralleling Interstate Highway 5.
Humboldt, Redwood Highway	5	That portion of Humboldt County situated within five miles of the Redwood Highway (U.S. 101) except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, State Highway 299 and Vicinity	5	That portion of Humboldt County situated within five miles of State Highway 299 and State route 96, except for those portions situated within ten miles of the Redwood Highway (U.S. 101) from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, Southeastern Part	15	That portion of Humboldt county adjacent to or east of, the road between Harris to Blocksburg to a point ten miles north of Blocksburg.
Humboldt, Residual Area	10	All areas of Humboldt County not classified in other cost groups except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Imperial	5	The entire county.
Inyo, Southeastern Part	20	That portion of Inyo County situated east of the western boundary of the Death Valley National Monument from the northern boundary of said national monument to the southern boundary of the county.
Inyo, Residual Area	5	All of Inyo County except the southeastern part described above.
Kern, Eastern Part	5	That portion of Kern County lying east of a north-south line drawn through the eastern boundary of the town of Tehachapi.
Lake	5	The entire county.
Lassen, Southern Part	10	That portion of Lassen County lying south of an east-west line drawn through a point ten miles north of Susanville.
Lassen,	15	All of Lassen County except the southern part described above.

COUNTY	% FACTOR	DESCRIPTION
Northern Part		
Los Angeles, Santa Catalina Island only	*	The entire Santa Catalina Island.
Madera, Central Part	5	That portion of Madera County lying between a line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest and a line drawn ten miles east of and paralleling the western boundary of the Sierra National Forest.
Madera, Eastern Part	5	All of Madera County except the western part and the central part described above.
Mariposa, Eastern Part	5	All of Mariposa County except that portion lying west of: <ul style="list-style-type: none"> <li>• A line drawn five miles east of, and paralleling State Highway 49 from the northern county line to Mormon's Bar; and</li> <li>• A line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest from a point due east of Mormon's Bar to the southern county line.</li> </ul>
Mendocino, Fort Bragg Area	10	Those portions of Mendocino County lying west of the Southern Redwood Highway Area, and south of the Ten Mile River.
Mendocino, Northern Redwood Highway Area	5	That portion of Mendocino County situated within five airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the northern boundary of the county.
Mendocino, Residual Area	10	Those portions of Mendocino County not otherwise classified except that portion situated within ten airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the southern boundary of the county. (Comprises the Northeastern part of the county and the coastal strip in the northwestern part).
Modoc	15	The entire county.
Mono	20	The entire county.
Monterey, Southern Part	5	All Monterey County except that portion lying north of an east-west line beginning on the coast two miles south of the City of Carmel and extending due east to the eastern boundary of the county.
Nevada	5	That portion of Nevada County not included in the Eastern Part.
Nevada, Eastern Part	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Eastern Part	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Northeastern Part	5	All of Placer County except the Eastern Part and the following: <ul style="list-style-type: none"> <li>• Within five miles of either side of State Highway 65 from the southern boundary of the county and the northern limit of the community of Lincoln.</li> <li>• Five miles either side of Interstate 80 from the southern boundary of the county and the northern limit of the community of Penryn.</li> <li>• West of a line drawn five miles east of, and paralleling State Highway 49.</li> <li>• Within five miles of either side of Interstate 80 between the northern limit of the community of Penryn and the northern limit of the community of Colfax.</li> </ul>
Plumas	5	The entire county.
Riverside, Eastern Part	20	That portion lying east of a north-south line drawn 50 miles west of the Arizona State Line and north to the county line and south to the county line.
Riverside,	5	That portion of Riverside County lying east of a north-south line drawn through the

COUNTY	% FACTOR	DESCRIPTION
Central Part		intersection of Interstate 10 and Fields Road extending from the southern county line of Riverside County, north to the southern county line of San Bernardino County to the Eastern Part of the County.
San Benito, Southern Part	5	All of San Benito County except that portion lying north of an east-west line drawn across the county from a point two miles south of the community of Paicines.
San Bernardino, Northeastern Part	5	That portion of San Bernardino County lying north and east of an east-west line drawn two miles north of Oro Grande, extending from the western boundary of the county to its intersection with the northerly extension of, and thence along a line drawn through the following points: A point five miles east of Victorville, the eastern edge of the communities of Running Springs and Camp Angelus then due south to the San Bernardino County line.
San Bernardino, Eastern Part	20	That portion lying east of a north-south line drawn 150 miles west of the Arizona State Line and north to the county line and south to the county line.
San Diego, Northeastern Part	10	That portion of San Diego County lying east of a north-south line drawn ten miles east of the community of Julian, said line extending from the northern boundary of the county to its intersection with an east-west line extending from the eastern boundary of the county to its intersection with the aforesaid north-south line, said east-west line being at its closest point, three miles due north of the community of Mount Laguna.
San Mateo, Southwestern Part	5	That portion of San Mateo County lying more than two miles westerly from the nearest point on Skyline Boulevard and south of an east-west line drawn through a point two miles north of the community of Montara.
Santa Cruz, Northwestern Part	5	That portion of the Santa Cruz County lying northerly and westerly from a line drawn from a point one mile north of Swanton on the coast through a point one mile north of Brookdale and situated more than two miles from the nearest point on the eastern boundary of the county.
Shasta, except Valley Area	5	All of Shasta County except that portion lying south of Shasta Lake and situated within ten miles of Interstate Highway 5.
Sierra	5	The entire county.
Siskiyou, Central Part	15	That portion of Siskiyou County situated within ten miles of U.S. Highway 97 from Grass Lake to the Oregon State Line.
Siskiyou, Salmon River	25	All of the drainage area of the Salmon River (including the North and South Forks) except that portion situated within the Somes Bar Area described below.
Siskiyou, Somes Bar Area	20	Those portions of the drainage areas of the Salmon and Klamath Rivers located within the boundaries of the Junction Elementary School District.
Siskiyou, Western Part	15	That portion of Siskiyou County lying westerly from a line drawn ten miles west of and parallel to Interstate 5, except the Somes Bar and Salmon River areas described above.
Siskiyou, Yreka and Residual Area	5	All of Siskiyou County except the Salmon River, Somes Bar and Western areas described above.
Sonoma, Northwestern Part	5	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point 15 miles inland, thence southerly to a point two miles west of the community of Los Lomas, thence southerly to a point on the coast two miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Tehama,	5	All of Tehama County except those portions situated within ten miles west of

COUNTY	% FACTOR	DESCRIPTION
Residual Area		Interstate Highway 5 from the north county line to the southern county line; within ten miles east of Interstate Highway 5 from the north county line southward to a point east of Red Bluff, thence within ten miles east of and paralleling State Highway 99 southward to the county line.
Trinity, Residual Area	15	All of Trinity County except the State Highway 299 area described below.
Trinity, State Highway 299	10	That portion of Trinity County situated within five miles of State Highway 299.
Tulare, Eastern Part	5	That portion of Tulare County lying east of a north-south line drawn through the western limits of the community of Silver City.
Tuolumne, Eastern Part	5	All of Tuolumne County except that portion lying west of State Highway 49.
Yuba, Northeastern Part	5	All of Yuba County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 65 and that portion lying south of a line drawn three miles north of, and paralleling State Highway 20.

\*As specifically approved by the Board.

- (b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).
- (1) Excluding Joint-Use Projects, if the project will house less than 101 pupils, the district is eligible for an Excessive Cost Hardship Grant equal to 12 percent of the funding provided by the New Construction Grant or 12 percent of the funding provided by the Modernization Grant.
  - (2) Excluding Joint-Use Projects, if the project will house between 101 and 200 pupils, the district is eligible for an Excessive Cost Hardship Grant equal to four percent of the funding provided by the New Construction Grant or four percent of the funding provided by the Modernization Grant.
  - (3) A Type I Joint-Use Project and a Type II, to reconfigure an existing school building, Joint-Use Project is eligible for an Excessive Cost Hardship Grant equal to:
    - (A) 12 percent of the funding provided by Section 1859.125(a) if the Qualifying SFP New Construction or Modernization Project pursuant to Section 1859.123 or 1859.123.1 will house less than 101 pupils.
    - (B) Four percent of the funding provided by Section 1859.125(a) if the Qualifying SFP New Construction or Modernization Project pursuant to Section 1859.123 or 1859.123.1 will house between 101 and 200 pupils.
  - (4) A Type III Joint-Use Project, to construct new school buildings, is eligible for an Excessive Cost Hardship Grant equal to eight percent of the funding provided by Section 1859.125(a).
- (c) Excessive Cost to Construct a New School Project.  
 If the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000

9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

- (d) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.
  - (1) Excluding Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if the district had a project that was previously approved by the DSA, and prior to January 22, 2003, has received SAB approval for a time extension for substantial progress and if the useable site acreage for the project is:
    - (A) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to eight percent of the New Construction Grant and eight percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).
    - (B) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).
    - (C) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 50 percent of the New Construction Grant and 50 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).
    - (D) less than 30 percent of the site size recommended by the CDE for the master planned project capacity.
  - (2) Excluding Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if all of the following conditions are met, as applicable:
    - (A) the Useable Acres of the site for the project are 60 percent or less of the CDE recommended site size based on:
      - 1. the current CBEDS Report at the existing site, if any, at the time of the CDE final plan approval for the project, if any, plus the greater of the Net School Building Capacity of the final new construction project plans submitted to the DSA as calculated in Education Code Section 17071.25(a)(2) or the pupil grants requested in the COS or Charter School project. The Useable Acres will include the existing site that is being utilized for this project plus any additional acreage to be acquired as a part of the Application.
      - 2. the current CBEDS Report at the site at the time of the CDE final plan approval for the modernization project.
    - (B) at least 60 percent of the classrooms in the construction plans are in multistory facilities for any type of new construction project.

- (C) the value of the site being acquired for a new construction project on a new site is at least \$750,000 per Useable Acre.
- (3) If the criteria in (d)(2) are met, the Excessive Cost Hardship Grant:
- (A) for new construction is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c) for a project with a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent. In no event shall the amount provided in this subsection for a new construction project on a new site exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the number of the pupil grants requested in the Application determined as follows:
1. The current estimated value of the project site as determined in Section 1859.74.6(a)(1).
  2. Divide the amount in (A)1. by the number of Useable Acres.
  3. Multiply the quotient in (A)2. by the number of Useable Acres recommended by CDE for the number of pupils described in Section 1859.83(d)(2)(A)1.
  4. Subtract the value in (A)1. from the product in (A)3.
  5. Multiply the difference in (A)4. above by 50 percent.
- (B) for modernization is equal to 15 percent of the Modernization Grant and 15 percent of the funding authorized by Section 1859.83(b) for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease of the CDE recommended site size below 60 percent.
- (4) For Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if:
- (A) the Type I ~~or~~ Joint-Use Project's Qualifying SFP New Construction Project pursuant to Section 1859.123 qualifies for an Excessive Cost Hardship Grant under Section 1859.83(d)(2) and (3)(A).
- (B) The Type II Joint-Use Project's Qualifying SFP Modernization Project pursuant to Section 1859.123.1 qualifies for an Excessive Cost Hardship Grant under Section 1859.83(d)(2) and (3)(B).
- ~~(C)~~ (C)The Useable Acres at the existing school site where the Type ~~III~~ II Joint-Use Project, to provide new school buildings, is to be constructed are 60 percent or less of the CDE recommended site size based on the existing enrollment at the site.
- (5) If the criteria in (d)(4)(A) or (C) are met, the Joint-Use Project Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a) for a project with a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent. For a Type I ~~or~~ Joint-Use Project when the Qualifying SFP New Construction Project involves new construction on a new site, in no event shall the amount provided in this subsection exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the Qualifying SFP New Construction Project pursuant to Section 1859.123 as calculated in Section 1859.83(d)(3)(A).
- (6) If the criteria in (d)(4)(B) are met, the Joint-Use Project Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a) for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease in the CDE recommended site size below 60 percent.
- (e) Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82 (a) (1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. If the Approved Application is received on or before April 29, 2002, the grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82 (a) (1) that has been reviewed by the OPSC and approved by the Board. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a) (1) that has been reviewed by the OPSC and approved by the Board. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.78.1.
- (f) Excessive cost due to handicapped access 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 handicapped access and fire code requirements.
  - (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.

(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 (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 (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 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

## Article 10. Fund Release and Priority Points

### Section 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(c) or 1859.81.2, the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50-05. With the exception of an apportionment made for a Type III Joint-Use Project to construct new school buildings, pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, to reconfigure existing school buildings. Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type III Joint-Use Project, to construct new school buildings, pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

### Section 1859.103. Savings.

A district may expend the savings not needed for a project on other high priority capital facility needs of the district including the relocation or district facilities necessary as a result of Subdivision (b) of Education Code Section 17072.12. Savings may be declared by the district in writing to the OPSC any time after the release of all funds for the project.

With the exception of savings attributable to a site apportionment made pursuant to Sections 1859.74.5 or 1859.81.2, the State's portion of any savings declared by the district or determined by the OPSC by audit must be used to reduce the SFP financial hardship grant of that project or other financial hardship projects within the district for a period of three years from the date the savings were declared by the district or determined by the OPSC audit. The State's portion of any savings from a new construction project or a Joint-Use Project, which will construct a new school building, may be used as a district matching share requirement, only on another new construction project, and the State's share of any savings from a modernization project or a Joint-Use Project, which will reconfigure an existing school building, may be used as a district matching share requirement, only on another modernization project.

Any interest earned on a financial hardship project not expended on eligible project expenditures will be treated as savings and will be used to reduce the SFP financial hardship grant for that project.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.63, 17072.12 and 17077.40, Education Code.

## Article 12. Joint-Use Project Grant Determination

### Section 1859.120. General (Joint-Use Project Funding).

A district seeking Joint-Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50-07.

If the Joint-Use Project will serve more than one grade configuration or the Joint-Use Project will serve multiple public school sites, the Joint-Use Project eligibility and funding will be determined based on the highest grade level served by the facility.

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

Reference: Section 17077.40, Education Code.

### Section 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

- (a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.
- (b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

### Section 1859.122. Type I Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint-Use Project may submit Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type I Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type I Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) ~~The Type I Joint-Use Project will provide facilities to be used~~ increase the square footage and/or Extra Cost for any of the following: ~~any of the following proposed facilities included in the SFP new construction project:~~
  - (1) ~~To improve pupil Academic Achievement.~~ A multipurpose room.
  - (2) ~~To provide Teacher Education.~~ A gymnasium.
  - (3) A Childcare facility.
  - (4) A library.
  - (5) A Teacher Education facility.
- (d) At least one of the Joint-Use Partner(s) is an institution of Higher Education, a governmental agency, or a non-profit organization. Other Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.
- (e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.
- (f) The district has joint-use square footage eligibility pursuant to Section 1859.124(a)-or has demonstrated that it will incur Extra Cost pursuant to Section 1859.125.1.
- (g) The construction contract for the Type I Joint-Use Project was not executed prior to April 29, 2002.
- (h) The plans and specifications for the Type I Joint-Use Project have been approved by the DSA.
- (i) The plans for the Type I Joint-Use project have been approved by the CDE.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.122.1. Type II Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type II Joint-Use Project may submit ~~an~~ Form 50-07 to the OPSC if all the following criteria are met:

- (a) If the Joint-Use Project proposes to reconfigure an existing school building, then the plans and specifications for the Type II Joint-Use Project are included in the plans and specifications for a new school or an addition modernization to an existing public school for which the district has requested SFP new construction modernization funding. The Type II Joint-Use Project will be located on the same site where the SFP modernization project is located and the site does not have the type of facility for which the Joint Use Funding is requested or the facility is Inadequate..
- (b) ~~The Type II Joint-Use Project will be located on the same site where the SFP new construction project is located.~~ If the Joint-Use Project proposes to construct new school buildings, then the project will be located on an existing school site that does not have the type of facility for which the Joint-Use Funding is requested or the facility is Inadequate.
- (c) ~~The Type II Joint-Use Project will increase the square footage and/or Extra Cost of any of the following proposed facilities included in the SFP new construction project:~~ The Type II Joint-Use Project will either Reconfigure an existing school building or construct new school buildings, and will provide facilities to be used for any of the following:
  - (1) A multipurpose room.
  - (2) A gymnasium.
  - (3) A childcare facility.
  - (4) A library.
  - (5) A Teacher Education facility.

- (d) At least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization. The Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.
- (e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.
- (f) The district has demonstrated it has joint-use square footage eligibility pursuant to Section 1859.124(b) ~~or that it will incur Extra Cost pursuant to Section 1859.125.1.~~
- (g) The construction contract for the Type II Joint-Use Project was not executed prior to April 29, 2002.
- (h) The plans and specifications for the Type II Joint-Use Project, to reconfigure existing school buildings, have been approved by the DSA and the CDE.
- (i) The Preliminary Plans for the Type II Joint-Use Project, to construct new school buildings, have been approved by the CDE.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.122.2. Type III Joint-Use Program Eligibility Criteria: Additional Type II Joint-Use Program Eligibility Criteria for Pupil Academic Achievement.

A district requesting funding for a Type III ~~II~~ Joint-Use Project that will Reconfigure existing school buildings, or construct new school buildings to provide for pupil Academic Achievement may submit a Form 50-07 to the OPSC if all the following criteria in sections 1859.122.1(a), 1859.122.1(b), 1859.122.1(d), 1859.122.1(e), 1859.122.1(f), and 1859.122.1(g) 1859.122.1(h), and 1859.122.1(i) are met and the plans and specifications were submitted to the DSA for review and approval prior to January 1, 2004.

- ~~(a) The Type III Joint Use Project will be located at an existing public school that does not have the type of facility for which the Joint Use Funding is requested or the facility is inadequate.~~
- ~~(b) The Type III Joint Use Project will provide facilities to be used for any of the following:
 
  - ~~(1) To improve pupil Academic Achievement.~~
  - ~~(2) To provide Teacher Education.~~
  - ~~(3) A multipurpose room.~~
  - ~~(4) A gymnasium.~~
  - ~~(5) A library.~~
  - ~~(6) A childcare facility.~~~~
- ~~(c) At least one of the Joint Use Partner(s) is:
 
  - ~~(1) An institution of Higher Education if the Type III Joint Use Project will provide facilities that improve pupil Academic Achievement or provide Teacher Education.~~
  - ~~(2) A governmental agency, an institution of Higher Education or a Non-Profit Organization if the Type III Joint Use Project will provide facilities to be used as a multipurpose room, a gymnasium, a library or a childcare facility. The Joint Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.~~~~
- ~~(d) The district has entered into a Joint Use Agreement that meets the criteria in Education code Section 17077.42.~~
- ~~(e) The district has joint use square footage eligibility pursuant to Section 1859.124(c).~~
- ~~(f) The construction contract for the Type III Joint Use Project was not executed prior to April 29, 2002.~~
- ~~(g) The Preliminary Plans for the Type III Joint Use Project have been approved by the CDE.~~

~~If the Joint Use Project will serve more than one grade configuration or the Joint Use Project will serve multiple public school sites, the Joint Use Project eligibility and funding will be determined based on the highest grade level served by the facility.~~

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

### Section 1859.123. Qualifying SFP New Construction Project.

For purposes of meeting the requirements in Sections 1859.122(a) ~~or 1859.122.1(a)~~, the district may combine the plans and specifications of its Joint-Use Project with any of the following new construction applications:

- (a) A new construction funding request that is submitted at the same time as the Joint-Use Project application.
- (b) An Approved Application for new construction funding that has not yet received an approval (i.e., not yet on the Unfunded List) if all the following criteria are met:
  - (1) The plans and specifications for the Joint-Use Project were not included in the original DSA approved plans and specifications for the Approved Application for new construction funding.
  - (2) The original DSA approved plans and specifications for the Approved Application for new construction funding are modified to incorporate the plans and specifications for the Joint-Use Project.
  - (3) The district has withdrawn the Approved Application for new construction funding pursuant to Section 1859.107 for the benefit of adding a Joint-Use Project.
  - (4) A revised new construction funding application and the Joint-Use Project application are resubmitted to the OPSC at the same time.
- (c) An Approved Application for new construction funding that has been approved, but has not received a full apportionment (i.e., currently on the Unfunded List) or has been fully funded, if all the following criteria are met:
  - (1) The plans and specifications for the Joint-Use Project were included in the original DSA approved plans and specifications for the Approved Application for new construction funding.
  - (2) The contract for the construction of the Joint-Use Project was not executed prior to April 29, 2002.
  - (3) The district entered into a joint-use agreement prior to the approval of the Approved Application for new construction funding that meets or will be amended to meet the criteria of Education Code Section 17077.42 and:
    - (A) ~~If the request is for a Type I Joint-Use Project, at least one of the Joint-Use Partner(s) is an institution of Higher Education.~~
    - (B) ~~If the request is for a Type II Joint-Use Project, at least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization.~~
  - (4) The Joint-Use Project application is submitted separately. There is no requirement that the Approved Application for new construction be withdrawn from the Unfunded List.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

### Section 1859.123.1 Qualifying SFP Modernization Project.

For purposes of meeting the requirements in Sections 1859.122.1(a) or 1859.122.2, the district may combine the plans and specifications of its Joint-Use Project with any of the following modernization applications:

- (a) A modernization funding request that is submitted at the same time as the Joint-Use Project application.
- (b) An Approved Application for modernization funding that has not yet received an approval (i.e., not yet on the Unfunded List) if all the following criteria are met:
  - (1) The plans and specifications for the Joint-Use Project were not included in the original DSA approved plans and specifications for the Approved Application for modernization funding.
  - (2) The original DSA approved plans and specifications for the Approved Application for modernization funding are modified to incorporate the plans and specifications for the Joint-Use Project.
  - (3) The district has withdrawn the Approved Application for modernization funding pursuant to Section 1859.107 for the benefit of adding a Joint-Use Project.
  - (4) A revised modernization funding application and the Joint-Use Project application are resubmitted to the OPSC at the same time.
- (c) An Approved Application for modernization funding that has been approved, but has not received a full apportionment (i.e., currently on the Unfunded List) or has been fully funded, if all the following criteria are met:

- (1) The plans and specifications for the Joint-Use Project were included in the original DSA approved plans and specifications for the Approved Application for modernization funding.
- (2) The contract for the construction of the Joint-Use Project was not executed prior to April 29, 2002.
- (3) The district entered into a joint-use agreement prior to the approval of the Approved Application for modernization funding that meets or will be amended to meet the criteria of Education Code Section 17077.42 and:
- (4) The Joint-Use Project application is submitted separately. There is no requirement that the Approved Application for modernization be withdrawn from the Unfunded List.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

### Section 1859.124. Joint-Use Project Square Footage Eligibility.

With the exception of funding requests for Extra Cost of a Type ~~II~~ I Joint-Use Project, the district must have square footage eligibility in order to submit an application for Joint-Use Project funding. Depending on the type of Joint-Use Project, the square footage eligibility is calculated as follows:

- ~~(a)~~ If the funding request is for a Type I Joint-Use Project, the square footage eligibility is the amount determined in the Square Footage Chart shown in Section 1859.124.1.
- ~~(b)~~ (a) If the funding request is for a Type ~~II~~ I Joint-Use Project, the square footage eligibility is calculated as follows:
  - (1) Determine the total square footage of the joint-use facility for which Joint-Use Project funding is requested.
  - (2) Determine the square footage for the type of joint-use facility for which Joint-Use Project funding is requested in the Square Footage Chart shown in Section 1859.124.1.
  - (3) Determine the square footage eligibility by subtracting the amount determined in ~~(b)~~(a)(2) from the amount determined in ~~(b)~~(a)(1). If a negative number results, the square footage eligibility is zero.
- ~~(c)~~ (b) If the funding request is for a Type ~~III~~ II Joint-Use Project, the square footage eligibility is calculated as follows:
  - (1) Determine the total square footage of any existing like-kind joint-use facilities at the same site where the Joint-Use Project facility will be located.
  - (2) Determine the square footage for the type of joint-use facility for which Joint-Use Project funding is requested in the Square Footage Chart shown in Section 1859.124.1.
  - (3) Multiply the amount in ~~(c)~~(b)(2) by 60 percent.
  - (4) If the amount determined in ~~(c)~~(b)(1) is greater than the amount determined in ~~(c)~~(b)(3), the square footage eligibility is zero. If the amount determined in ~~(c)~~(b)(1) is equal to or less than the amount determined in ~~(c)~~(b)(3), the square footage eligibility is the amount determined in ~~(c)~~(b)(2).

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

### Section 1859.124.1. Square Footage Facility Chart.

Use the Chart below to determine square footage for purposes of Section 1859.124. The three columns to the left of the Chart indicate the facility types that may be funded under a Type I, or Type II ~~or~~ Type ~~III~~ Joint-Use Project.

CHART OF SQUARE FOOTAGES (In Square Feet)						
Type I	Type II	Type <del>III</del>	Facility Type	Elementary School K-6, K-8	Middle School 7-8 or 6-8 (on Separate Campus)	High School 7-12 or 9-12 (on Separate Campus)

<u>X</u>	X	✖	Multi-purpose Room (includes food service)	5.3 per pupil Minimum 4,000	5.3 per pupil Minimum 5,000	6.3 per pupil Minimum 8,200
<u>X</u>	X	✖	Gymnasium (includes shower/locker)	12.9 per pupil* Minimum 6,828* Maximum 16,000*	12.9 per pupil Minimum 6,828 Maximum 16,000	15.3 per pupil Minimum 8,380 Maximum 18,000
<u>X</u>	X	✖	Library	2.3 per pupil plus 600	3.3 per pupil plus 600	4.3 per pupil plus 600
X	<u>X</u>	✖	Teacher Education** or Pupil Academic Achievement**	39 per pupil or as approved by CDE		
	<u>X</u>		<u>Pupil Academic Achievement***</u>	<u>39 per pupil or as approved by CDE</u>		
X	X	✖	Childcare	60 per child - Minimum 1,440		

\*Available only if there is no multipurpose room or the existing multipurpose room is inadequate on the campus and the Joint-Use Agreement includes gymnasium space rather than a multipurpose room.

\*\* Subject to the CDE approval.

\*\*\* Subject to the CDE approval. Plans and specifications must be in to DSA for review and approval prior to January 1, 2004.

- (a) If the Joint Use Project requests funding for a multi-purpose room, gymnasium or library, multiply the amounts shown for the type of facility proposed in the Joint-Use Project by either (1) or (2) below:
- (1) If the funding request is for a Type # I Joint-Use Project, the sum of the latest CBEDS enrollment at the site and the number of pupil grants requested in the Qualifying SFP New Construction Project pursuant to Section 1859.123.
  - (2) If the funding is for a Type # II Joint-Use Project, the latest CBEDS enrollment at the site.
- (b) If the Joint Use Project requests funding for Teacher Education or Pupil Academic Achievement, multiply the amounts shown, or the amounts approved by the CDE, by the number of pupils that will receive specialized training for teacher education and/or academic achievement.
- (c) If the Joint Use Project requests funding for a childcare facility, multiply the amounts shown by the number of children that will receive services.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.125. Joint-Use Project Grant Determination Based on Square Footage.

If the funding request is to construct square footage, the Joint-Use Grant is the lesser of the amount determined in (a) or (b):

- (a) The sum of the amounts determined below:
  - (1) \$173.30 for the Toilet Facilities in the Joint-Use Project as calculated in (a)(1)(B) below:
    - (A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.
    - (B) Multiply the quotient determined in (a)(1)(A) by the Toilet Facilities in the joint-use facility.
  - (2) \$96.30 for non-Toilet Facilities in the Joint-Use Project as calculated in (a)(2)(B) below:
    - (A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.
    - (B) Multiply the quotient determined in (a)(2)(A) by the non-Toilet Facilities in the joint-use facility.
- (3) 50 percent of site development work that meets the following criteria:
  - (A) It is necessary and applicable to the Joint-Use Project.

- (B) It meets the requirements for service site development or utility costs as outlined in Section 1859.76(a) and/or (c). Off-site development work is not allowed as part of a Joint-Use Project; however, if off-site development work is necessary pursuant to Section 1859.76(b) for either a Type I or II Joint-Use Project, the district may request the eligible off-site work under the Qualifying SFP New Construction Project pursuant to Section 1859.123.
- (C) It is considered excessive site development costs and not eligible for funding under the Qualifying SFP New Construction or Modernization Project pursuant to Section 1859.123 or 1859.123.1.
- (b) \$1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). \$1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle School Pupil(s). \$2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.

If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans, with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements of Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project.

The dollar amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71 and are eligible for Excessive Cost Hardship Grant(s) pursuant to Section 1859.83 (a), (b) and (d). The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

The Joint-Use Grant amounts provided in this Section and Section 1859.125.1, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.125.1. Additional Type II Joint-Use Project Extra Cost Grant.

In addition to the square footage Joint-Use Grant provided in Section 1859.125, a Type II Joint-Use Project may receive funding for Extra Cost equal to the lesser of (a) or (b):

- (a) An amount determined by subtracting (a)(2) from (a)(1):
  - (1) The sum of the following:
    - (A) 50 percent of the estimated cost to construct the Joint-Use Project.
    - (B) 50 percent of site development work that meets the following criteria:
      - 1. It is necessary and applicable to the Joint-Use Project.
      - 2. It meets the requirements of Section 1859.76(a) and/or (c).
      - 3. It is considered excessive site development costs and not eligible for funding under the Qualifying SFP New Construction Project pursuant to Section 1859.123.
      - 4. The district did not receive funding for the site development work under Section 1859.125.
  - (2) The sum of the following:
    - (A) \$173.30 for the Toilet Facilities in the Joint-Use Project.
    - (B) \$96.30 for the non-Toilet Facilities in the Joint-Use Project.
- (b) An amount determined by subtracting (b)(2) from (b)(1):
  - (1) \$1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). \$1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle

School Pupil(s). \$2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.

- (2) The Joint-Use Grant amount determined in Section 1859.125 based on square footage, if applicable.

If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements in Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project.

The amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

The Joint-Use Grant amount provided in this Section and Section 1859.125, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.126. Joint-Use Project Funding Priority and Funding Availability.

In each application acceptance period, the Board shall fund eligible Joint-Use Projects as follows:

- (a) Type I Joint-Use Projects in the following order:
  - (1) By date order received for the applications the districts have designated as first funding priority.
  - (2) By date order received for the applications the districts have designated as second funding priority and so on until all Type I Joint-Use Project applications have been apportioned.
- (b) Type II Joint-Use Projects in the following order:
  - (1) By date order received for the applications the districts have designated as first funding priority.
  - (2) By date order received for the applications the districts have designated as second funding priority and so on until all Type II Joint-Use Project applications have been apportioned.
- ~~(c) Type III Joint-Use Projects in the following order:
  - (1) By date order received for the applications the districts have designated as first funding priority.
  - (2) By date order received for the applications the districts have designated as second funding priority and so on until all Type III Joint-Use Project applications have been apportioned.~~

If a Joint-Use Project cannot be fully apportioned because of the funding available, the district may either accept the available funding as the full and final apportionment for the project or refuse funding. If funding is refused, the application will be returned to the district and the Board shall consider funding the next project eligible for an apportionment based on the above funding priority mechanism.

Any Joint-Use Project not considered for an apportionment because of the above funding priority mechanism shall be returned to the district. A district may resubmit a returned Joint-Use Project application during the subsequent application acceptance period identified in Section 1859.121(b), if the application meets the eligibility criteria at the time of re-submittal.

Any funds not apportioned in the application acceptance period identified in Section 1859.121(a) or any Joint-Use Project funds returned due to projects being rescinded or reduced to cost incurred shall be made available for apportionment in the application acceptance period identified in Section 1859.121(b).

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.127. Joint-Use Partner(s) Financial Contribution.

~~The Joint-Use Partner(s) is required to make~~ A financial contribution towards the cost of the Joint-Use Project equal to the state funding provided by these Regulations is required. Any funding provided by the Joint-Use Partner(s) cannot be funds that would otherwise be available to the district. The contribution made by the Joint-Use Partner(s) shall be no less than 25 percent of eligible project costs, unless the school district has passed a local bond which specifies that such funds are to be used for the Joint-Use Project, in which case the school district may opt to provide up to the full 50 percent local share of eligible costs. Any funding provided by the Joint-Use Partner(s) cannot be funds that would otherwise be available to the district.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.129. Time Limit on Apportionment.

- (a) If the district received an apportionment for a Type I Joint-Use Project or a Type II, to reconfigure existing school buildings, Joint-Use Project, the district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10.
- (b) If the district received an apportionment for a Type III II Joint-Use Project, to construct new school buildings, the district:
  - (1) Has one year from the date of that apportionment to submit the plans and specifications to the OPSC for the Joint-Use Project that have been approved by the DSA and the CDE (plans only), otherwise the apportionment will be rescinded without further Board action.
  - (2) Has 18 months from the date the DSA and CDE approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action.
  - (3) Is subject to substantial progress time limit on the apportionment as outlined in Subdivision (b) of Education Code Section 17076.10.

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

Reference: Sections 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

#### Section 1859.130. Eligible Joint-Use Project Expenditures.

Joint-Use Project Grants shall be expended as set forth in Education Code Section 17072.35 with the exception of site acquisition, including lease of land. When a new site is necessary for a ~~Type I or II~~ Joint-Use Project, the district may request site acquisition costs under the Qualifying SFP New Construction Project pursuant to Section 1859.123.

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

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

**State Allocation Board Implementation Committee  
December 5, 2003**

**Lease Lease-Back Agreements  
(Education Code Section 17406)**

**Issue**

To review the use of Lease Lease-Back Agreements (LLB) for project delivery of facilities funded through the School Facility Program (SFP).

**Background**

Education Code (EC) Sections 17400 through 17425 provide a method for financing school construction. Within that financing method Education Code (EC) Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. Generally, the districts then request State funding for the purpose of buying out the lease and acquiring the facility.

To date, neither the State Allocation Board (SAB) nor Office of Public School Construction (OPSC) has taken a position on when the use of lease arrangements under EC Section 17406 is appropriate and, therefore when the exemption from competitive bidding is valid. It is the belief of the OPSC that the obligation to determine the appropriate and legitimate use of any contract delivery method permitted in law rests with the school district. The OPSC has focused instead on providing guidance to those districts that elect to use LLB agreements to insure that there is no conflict with SFP law and regulations or with statutes relating to the use of the state general obligation bonds.

**Description**

Over a period of several years, the OPSC responded to a few individual school district questions on issues related to the use of EC 17406. These responses were intended to guide the districts as to how to structure their agreements so as to avoid conflicts with SFP laws and regulations. Without the knowledge of the OPSC, the responses were widely disseminated among school districts as the OPSC "policy" on lease lease-back project delivery methods.

As a result of a rapidly increasing number of inquires to the OPSC regarding issues related to the use of EC Section 17406, the OPSC became aware that the use of lease, lease-back agreements was growing. For the first time, the OPSC also became aware that such agreements were now in common use on modernization projects, something that had never been previously discussed with the office. Although staff continued to take the position that it was the district's responsibility to determine when it was appropriate and legal to use EC Section 17406 as a project delivery method, staff also became concerned that there was no official SAB position or regulations on the matter. To correct that, staff began a two-part discussion on the use of EC Section 17406 at the Board's Implementation Committee.

The discussions were designed as a fact-finding effort to learn about the use of lease lease-back agreements and to develop regulations to solidify the policy statements made over several years of correspondence.

Following those discussions, the OPSC presented proposed changes to the State Allocation Board's regulations concerning the interface of LLB agreements and the SFP. The presentation, made in September 2003, also included a report to the SAB regarding the use of LLB agreements as a delivery method for projects funded under the SFP. It was apparent that this delivery method was being used or considered by a significant number of districts and the OPSC wished to inform the Board that projects constructed using the LLB method were being presented for funding on consent calendars. The report and the proposed regulation changes were the result of discussions at four separate Implementation Committee meetings.

When the item was presented to the SAB, some members expressed concerns about the effect that widespread use of EC Section 17406 might have on the Public Contract Code (PCC) competitive bidding requirements. The SAB declined to take action on the recommended regulation changes and asked that staff prepare further information relating to the issue for consideration at a future meeting.

### **The Current Use of EC Section 17406**

In broad terms there are currently two types of LLB arrangements being used to construct state funded projects:

- The project is financed by the developer / contractor team and the district pays a yearly lease to use the facility. The district makes no other payments to the developer, who carries the outstanding cost of the project. The lease, by law, may be up to 40 years in length. It may include an agreement to terminate the lease at any time.
- The project is financed by the district with state or local funds, or a combination of both. In this case a "lease agreement" may exist, but it is designed to be terminated at the end of the construction. The lease payments, if any, are made during the course of construction and at the completion of the project. They are essentially progress payments as would be found on a traditional construction contract.

### **The Growing Use of Lease, Lease-Back Agreements**

At the September meeting, the SAB asked staff to quantify the number of projects which have used lease lease-back agreements to deliver projects. This information is not reported to OPSC as a part of the application or funding process. Although it may be a matter of discussion in the closeout audit of an individual project, it is not captured and recorded in a way that would allow a count of the projects.

The San Diego County Office of Education did survey districts within that county. They found that in the last 6 years, 35 to 40 projects were done with LLB. The county estimates that approximately 25% were modernization projects. The County comprises about 10% of the K-12 population.

## **Arguments in Favor of the LLB Delivery Method**

School districts which have used the Lease Lease-back project delivery method cite the following as reasons for selecting it over the traditional design, bid, and build approach:

- ❑ **Avoid competitive bidding**  
Many districts consider the competitive bidding process as required under the Public Contracts Code to be problematic. The process leaves them with little control over the selection of the contractor for the project, and places them in financial jeopardy if the contractor selected is unwilling or unable to perform the construction as planned. The LLB process allows the district to select the contractor / developer based on criteria other than cost.
- ❑ **Guaranteed price**  
The district is able to negotiate a fixed price for the lease and, if necessary, the purchase price of the project. Unanticipated costs are the responsibility of the contractor / developer, not the school district.
- ❑ **Team approach**  
Districts have expressed the opinion that LLB allows a team approach to the construction of school facilities. The district, developer and contractor all have an interest in a project completed on time and in budget.
- ❑ **Known contractor**  
Contractors can be selected on the basis of their record of success, recommendations from previous clients and financial strength.
- ❑ **No experienced staff at district**  
Many districts do not have experience with large construction projects. The responsibility for co-ordination of the project, obtaining required approvals, and project scheduling become the contractor / developers, who have demonstrated experience in similar school construction projects.
- ❑ **Value engineering opportunities**
- ❑ **Contractors and subcontractors come from other industries.** Contractors not normally interested in participating in the 'low bid' process may be willing to participate in negotiated contracts as permitted in the LLB process. This brings new and highly qualified contractors into the school construction arena.

## **Concerns About the Use of the LLB Delivery Method**

While advocates of the use of EC Section 17406 argue that it is less cumbersome than the competitive bidding process and that it allows a team approach to the development of the project, it is important to keep in mind the reasons that competitive bid requirements were added to the Public Contracts Code. The intent was not to make it harder to complete public works projects, but to ensure that State funds were being used in an efficient and cost-effective manner. The goal of the Legislature in enacting the code was<sup>1</sup>:

1. To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds, and;
2. To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices, and;

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<sup>1</sup> Public Contracts Code, Section 100

3. To eliminate favoritism, fraud, and corruption in the awarding of public contracts

The growing use of EC Section 17406 means that significant numbers of projects and significant sums of public funding are not being subjected to the checks and balances of the competitive bid process. Recent interpretations made by some interested in furthering the use of EC Section 17406 are so broad as to make the public contract competitive bid requirements moot, effectively eliminating competitive bidding requirements on all new construction and modernization public school projects whether funded locally or in conjunction with the State program.

In addition to the lack of checks and balances on the selection of contractors, there may be other reasons to proceed cautiously when using lease lease-back arrangements which do not provide a long term financing mechanism for the project. Primary among these is summarized in the Supreme Court majority opinion in *The City of Los Angeles v. Offner* where the following was stated:

*“It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year’s payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a ‘lease’ is a subterfuge and is actually a sales contract in which the ‘rentals’ are installment payments on the purchase price for the aggregate of which and immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void.”(underlining added)*

It appears to the Office of Public School Construction that some of these circumstances may not truly exist in all lease lease-back contracts.

- ❑ The lease must be entered into in ‘good faith’. Presumably that means that both parties to the agreement intend that a lease arrangement will exist and will be implemented.
- ❑ The lease arrangement may not be a subterfuge. Many districts openly admit that they are using lease lease-back contracts for the perceived benefits listed earlier which are only available if there is no competitive bid requirement.
- ❑ The agreement may not create an immediate indebtedness beyond each yearly installment. Some agreements require ‘pre-lease’ or ‘rental’ in one form or another which amount to the full cost of the facility. It appears that an immediate indebtedness has been created by the agreement.
- ❑ The District must own the site on which the project will be constructed. Under EC 17402, the district owns the site if it holds title, has an option to purchase, or is acquiring the site through eminent domain. An arrangement whereby the option to purchase the site is with the developing entity could be construed as a subterfuge to avoid EC 17407. That section allows lease lease-back on property owned by others, but specifically requires competitive bidding of the agreement.

It is possible then that the school construction contract, using a lease agreement that does not meet the standard of the Offner decision, may be invalid, raising the question of the appropriateness of the state funding apportionment.

### **The Purpose of EC Section 17406**

Advocates of the use of LLB agreements argue that the only requirement in EC Section 17406 is that the district owns the property to be developed and that the property be 'let' to the developer for at least \$1 per year. Under this circumstance the district is then relieved from the normal PCC competitive bid requirement for the entire construction project. This interpretation expands the meaning of EC 17406 beyond its simple language. EC 17406 is clear in allowing districts lease a district owned site to a person, firm or corporation when the lessee agrees to construct buildings for the use of the school district. However, the exemption from public bidding allowed in this section applies only to the property lease from the district to the developer. The section is silent on the selection process for the construction of the buildings; it does not address nor provide an exemption to competitive bidding in that instance.

Since state SFP funds may only be expended on property owned by the district (often by purchase with program funds), all new construction and modernization projects would be eligible for this exemption from competitive bidding. Thus the statute can only have one outcome: to exempt all school construction projects from the PCC competitive bid requirements required of all other public works projects. It seems improbable that this could have been the purpose of the legislation. A far more rational meaning can be assigned to the section, however, when it is seen as one part of a financing mechanism. This interpretation is sustained in the Appeals Court ruling in Morgan Hill USD v. Amaroso. In that case the court stated that, "The Education Code creates the following method for financing school construction." The court then went on to describe EC Sections 39300 through 39325, which are now renumbered as 17400 through 17425. Thus EC 17400 through 17425 is a method of financing school construction in which EC 17406 addresses only the mechanism by which the school district can let the property where the construction will take place. That property, along with the building improvements, is then leased back to the school district. The construction is financed by the developer/lessor and provided to the district through a year-to-year lease. The selection process for that lease-back is the same for any lease arrangement into which a school district may enter.

Staff believes that the vast majority of projects currently using LLB arrangements do not have a financing component. If a "lease agreement" other than the site lease exists at all, it serves no significant purpose other than to attempt to justify the use of EC Section 17406. The full cost of the project is borne by the district using the normal funds it has available for capital projects. Normal progress payments are made to the contractor through the course of construction, and the project is completely paid for by the district at the project completion. The projects are in every regard typical public works projects, except that they have not been competitively bid.

## **Lease Lease Back Agreements in the SFP**

Under the provisions of the SFP, state funding is provided for 50 percent of a new construction project or 60 percent of a modernization project. The balance of the project costs must be provided by the district through any available local funding source. The district portion is the district “matching share” and must be expended before the notice of completion is filed for the project. Because the state share and the district match are sufficient to completely fund the project, it is unnecessary to enter into a LLB agreement unless state funding is not contemplated or is not available.

## **Competitive Selection Processes**

### **Competitive Selection on LLB Projects**

Even though districts using EC Section 17406 argue that it allows a lease agreement for the construction of school facilities without competitive bid, some districts do use a competitive selection process. There are several reasons to have a selection process, even when the district believes that it is not specifically required.

- ❑ Helps ensure a competitive cost for the project.
- ❑ Allows the district to select the most qualified firm to design and construct the project, based on experience, financial capability, and other factors.
- ❑ Provides a public process open to review.
- ❑ Allows open participation.

Districts and district legal advisors have developed several guidelines to use and recommend. Several of these documents are attached to this item for reference and comparison.

### **Competitive Selection on Design Build Projects**

Legislation governing the use of design build processes (EC Section 17250.25(c)) provides two options for selection of the design / build team: lowest responsible bid or ‘best value’ selection of prequalified candidates based on a weighted scoring method. The best value method gives the school district flexibility in awarding a project based on factors other than price. The required selection criteria are price, technical expertise, life cycle costs, skilled labor force, and safety record. In addition, the district may consider design approach, project approach, project features, schedule, value engineering and warranty. This process can be time consuming and, in the opinion of some, is fraught with protest opportunities; however, it does provide an open process which assists the district in finding a qualified construction team at a competitive price while also keeping public safeguards in place.

### **Other Competitive Selection Processes**

The Building Industry Association, which is represented on the Board’s Implementation Committee, forwarded a suggested selection process patterned on those used by its members. The process relies on an extensive pre-selection process to determine the contractors who will be invited to bid on the project. The pre-qualification has many criteria, including experience, current work commitments, history of like projects, technical expertise, and bonding capacity.

Selected contractors are invited to submit bids on the project. A negotiation process then follows and the contractor representing the 'best value' as well as a competitive price is awarded the project.

### **Lease Lease-Back Arrangements in SFP Projects.**

Regardless of debates about the appropriate use of EC Section 17406 or about whether competitive selection processes should be used, districts are currently using lease lease-back agreements to construction SFP new construction and modernization projects. Amendments to the Board's regulations are needed to advise on the several issues as follows:

- ❑ The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- ❑ The lease agreement must contain the following provisions or information:
  - The value of the lease.
  - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
  - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- ❑ State bond funds may not be used to make lease or rental payments.

### **Conclusion**

The regulations in Attachment A should be adopted by the State Allocation Board at the earliest opportunity.

Legislation should be considered to address the proper use of EC Section 17406 and to clarify, if necessary, the relationship of that section to the entire article on leases in EC Section 17400 through 17425.

**ATTACHMENT A**  
Potential Regulatory Amendments  
Implementation of Lease Lease-Back Regulations  
State Allocation Board Implementation Committee Meeting, December 5, 2003

1859.23 SFP Application for Funding of Projects Leased Under the Provisions of Education Code Section 17406.

A district may receive funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided that the district has title to the site and all of the following are met:

- a) The project costs are financed by the developer of the district owned site.
- a) The lease agreement creates no immediate indebtedness for the aggregate installments and confines the district's liability to each annual installment as it falls due.
- c) The lease agreement was signed at a time when state funding was not available for the project.
- b) The lease agreement contains or will contain a purchase option that, when exercised, shall terminate the lease.
- c) The title of all improvements shall vest with the district no later than 180 days after either receiving an adjusted grant apportionment from the Board or filing of the last notice of completion for the project, whichever is later.
- d) State bonds funds including the district's local matching share required pursuant to Section 1859.77.1 or 1859.79 shall not be used for lease or rental payments on the project.
- e) All requirements of Chapter 12.5 have been met including but not limited to compliance with SFP Regulation Section 1859.70 and Labor Code Section 1771.7.

## ATTACHMENT B

### Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

(1) One or more buildings located or to be located on one or more sites.

(2) The remodeling of any building located on a site to be leased pursuant to this article.

(3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.

(4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration

of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project. Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.