July 19, 2011

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS, AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED EMERGENCY REGULATORY ACTION

In accordance with Assembly Bill 1302, Chapter 713, Statutes of 2006, enclosed are proposed emergency regulations adopted by the State Allocation Board (SAB) at its meeting on June 22, 2011. These emergency amendments to the School Facility Program (SFP) Regulations will facilitate the SAB apportioning the remaining Seismic Mitigation Program (SMP) funding to eligible school building structural projects. The SAB expanded the list of eligible structural types from eight to 14, and clarified that eligible structures must have "structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event." The amendments eliminate an eligibility criterion that required a "short period spectral acceleration" (ground shaking) of at least 1.68 g based on U.S. Geological Survey maps. The Division of the State Architect (DSA) must review and approve structural engineer reports that conform to the DSA guidelines. Unacceptable risk of injury from faulting, liquefaction, or landslide must be documented by an engineering geologist's hazard report in accordance with the California Building Code and with the concurrence of the California Geological Survey.

Attached to this Notice is the specific regulatory language of the proposed emergency action and the Finding of Emergency. You may also review the proposed regulatory language and Finding of Emergency on the Office of Public School Construction (OPSC) Web site at www.dgs.ca.gov/opsc. The proposed emergency regulations would amend the SFP Regulations under the California Code of Regulations, Title 2, Chapter 3, Subchapter 4, Group 1, State Allocation Board, Subgroup 5.5, Regulations relating to the Leroy F. Greene School Facilities Act of 1998.

The OPSC, on behalf of the SAB, will be submitting these emergency regulations to the Office of Administrative Law (OAL) during late July or early August 2011. The following is an overview of the proposed regulatory amendments.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established the SFP through Senate Bill 50, Chapter 407, Statutes of 1998. The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the OAL and filed with the Secretary of State on October 8, 1999.

The SMP was established by Assembly Bill 127, Chapter 35, Statutes of 2006 (Nunez/Perata), for the seismic repair, reconstruction, or replacement of "the most vulnerable" school facilities. It became law on May 20, 2006 and funding was made available in the amount of $199.5 million through Proposition 1D approved by the voters at the November 7, 2006 General Election.

The purpose of the Program is to save lives and prevent damage in the most vulnerable school facilities during a seismic event. However, only three seismic mitigation projects have been approved by the SAB to date, representing State funds in the amount of $4.7 million. The proposed emergency regulations are necessary to increase program participation so the SAB can apportion the remaining $194.8 million of State bond funding.

The emergency amendments expand the list of eligible building structure types from eight to 14, and clarify that eligible structures must have "structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event." The definition of "Most Vulnerable Category 2 Buildings" was amended to promote broader participation by school districts in the SMP.

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

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

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

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

- Deletes that this term is "as defined by the DSA";
- Deletes the criterion of a short period spectral acceleration (ground shaking threshold) of 1.68 g based on U.S. Geological Survey maps;
- Deletes that a structural engineer report must be provided regarding the lateral force resisting system, collapse prevention performance objectives, and potential for catastrophic collapse (this criteria is modified and re-stated in Regulation Section 1859.82); and
- Clarifies and expands eligible structure types from eight to 14 as follows:

  C1 - Concrete Moment Frame,
  C1B - Reinforced Concrete Cantilever Columns with ~~Wood Roofs~~ Flexible Diaphragms,
  C2A - Concrete Shear Wall with Flexible Diaphragms,
  C3A - Concrete Frame with Infill Masonry Shear Walls and Flexible ~~Floor and Roof~~ Diaphragms,
  PC1 - Precast/Tilt-up Concrete Shear Wall with ~~Concrete Floor and Roof~~ Flexible Diaphragms,
  PC1A - Precast/Tilt-up Concrete Shear Wall with ~~Flexible Roof~~ Rigid Diaphragms,
  PC2A - Precast Concrete Frame without Concrete Shear Walls and with Rigid ~~Floor and Roof~~ Diaphragms,
  PC2 - Precast Concrete Frame and Roofs with Concrete Shear Walls,
  URM - Unreinforced Masonry Bearing Wall Buildings,
  RM1 - Reinforced Masonry Bearing Wall with Flexible Diaphragms,
  URMA - Unreinforced Masonry Bearing Wall with Rigid Diaphragms,
  S1B - Steel Cantilever Columns with Flexible Diaphragm,
  S3 - Steel Light Frame Metal Siding and/or Rod Bracing, or
  M - Mixed construction containing at least one of the above structures types.

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

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

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

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

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

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

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

SUBMISSION OF COMMENTS

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the OAL, the adopting agency provide a Notice of the Proposed Emergency Action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed emergency regulatory action. Written comments

submitted via U.S. mail, e-mail or fax must be received at the OAL within five days after the SAB submits the emergency regulations to the OAL for review.

Please reference submitted comments as regarding "State Allocation Board - Seismic Mitigation Program Amendments," addressed to:

Reference Attorney

Mailing Address: Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

E-mail Address: staff@oal.ca.gov

Fax No.: (916) 323-6826

For the status of the SAB submittal to the OAL for review, and the end of the five-day written submittal period, please consult the Web site of 1) the OAL at www.oal.ca.gov under the heading "Emergency Regulations," and 2) the OPSC at www.dgs.ca.gov/opsc under the Tab "Resources," then click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

Pursuant to Title I, Section 55, please send a copy of written comments regarding the proposed regulatory action, as well as requests for a copy of the proposed regulatory action, and questions concerning the substance of the proposed regulatory action, addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction
707 Third Street, Room 1-430
West Sacramento, CA 95605

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 376-5332

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Emergency Regulatory Action may be directed to Robert Young at (916) 375-5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Ms. Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.