

FINAL STATEMENT OF REASONS

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

Section 1859.2. Definitions.

Specific Purpose of the Regulation

To provide the meaning of specific words and terms that are essential to these regulations and to amend the definition of "Most Vulnerable Category 2 Buildings" by the following:

1. deleting that this definition is "as defined by the DSA,"
2. deleting a SMP eligibility criterion that required a "short period spectral acceleration" (ground shaking) of at least 1.68 g,
3. expanding the list of building structure types eligible for Seismic Mitigation Program (SMP) funding,
4. making non-substantive word corrections in five existing building structure types,
5. deleting a building occupancy criterion, and
6. deleting the criteria for structural engineer reports.

Need for the Regulation

To facilitate the State Allocation Board (SAB) apportioning the remaining SMP funding for the repair, reconstruction, or replacement of "the Most Vulnerable Category 2" school facilities as authorized by Assembly Bill (AB) 127, Chapter 35, Statutes of 2006 (Perata/Nunez). AB 127 became law on May 20, 2006. It made available up to \$199.5 million for seismic mitigation funding which was approved by the voters in Proposition 1D at the November 7, 2006 General Election (the Kindergarten-University Public Education Facilities Bond Act of 2006).

Definition of "Most Vulnerable Category 2 Buildings:

Line 1: It was necessary to delete ~~as defined by the DSA,~~ because the definition of such buildings must be as defined in these regulations and not as defined by another agency without specificity.

Lines 1-3: It was necessary to delete an eligibility criterion that required a building to be located where there is a "short period spectral acceleration" (ground shaking) of at least 1.68 g based on U.S. Geological Survey maps, because few applications for seismic mitigation funding were being submitted with this criterion in effect. Deleting the criterion is expected to increase SMP funding applications and thereby carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D.

Lines 3-4: It was necessary to delete ~~the building is designed for occupancy by students and staff~~ in order to restate this criterion in new subsection 1859.82(a)(1)(C). The criterion is more applicable to the eligibility criteria for SMP funding in the new subsection.

Lines 4-5: It was necessary to delete ~~the building type is either~~ and add "meets the criteria outlined in Section 1859.82(a)(1)(C) and is one of the following building types" in order to incorporate the SMP eligibility criteria and structural engineer's report criteria contained in new subsection 1859.82(a)(1)(C) into the definition of "Most Vulnerable Category 2 Buildings."

Lines 6-20: It was necessary to expand the list of eligible building structure types from eight to 14 to help increase SMP funding applications and thereby carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D.

Line 7: For building type C1B, it was necessary to delete ~~Wood Roofs~~ and add "Flexible Diaphragms" in order to more accurately describe this building type.

Line 8: It was necessary to add building type C2A and its definition in order to expand the list of building structure types eligible for SMP funding and thereby help carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D. This addition was recommended by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

Line 9: For building type C3A, it was necessary to relocate it for purposes of maintaining alphabetical order. It was also necessary to shorten "Flexible Floor and Roof Diaphragms" to "Flexible Diaphragms" in order to more accurately describe this building type.

Line 10: For building type PC1, it was necessary to delete ~~Concrete Floor and Roof~~ and add "Flexible" in order to more accurately describe this building type.

Line 11: For building type PC1A, it was necessary to delete ~~Flexible Roof~~ and add "Rigid Diaphragms" in order to more accurately describe this building type.

Line 12: For building type PC2A, it was necessary to delete ~~Floor and Roof~~ in order to more accurately describe this building type.

Line 14: It was necessary to delete this building type and its definition in order to relocate it to line 9 for purposes of maintaining alphabetical order (see line 9 above).

Line 16: It was necessary to add building type RM1 and its definition in order to expand the list of building structure types eligible for SMP funding and thereby help carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D. This addition was recommended by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

Line 17: It was necessary to add building type URMA and its definition in order to expand the list of building structure types eligible for SMP funding and thereby help carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D. This addition was recommended by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

Line 18: It was necessary to add building type S1B and its definition in order to expand the list of building structure types eligible for SMP funding and thereby help carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D. This addition was recommended by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

Line 19: It was necessary to add building type S3 and its definition in order to expand the list of building structure types eligible for SMP funding and thereby help carry out the Legislative intent of AB 127 and the voters' approval of Proposition 1D. This addition was recommended by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

Line 20: It was necessary to add building type M and its definition in order to expand the list of building structure types eligible for SMP funding and thereby help carry out the Legislative intent of AB 127 and the voters' approval

of Proposition 1D. This addition was recommended by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

Lines 20-23: It was necessary to delete:

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

because different and more detailed criteria for a required structural engineer's report are being added in new subsection 1859.82(a)(1)(C).

Section 1859.82. Facility Hardship.

Specific Purpose of the Regulation

To re-state three SMP eligibility criteria in new subsection 1859.82(a)(1)(C) 1., 2., and 3. which were previously stated elsewhere in Regulation Sections 1859.2 and 1859.82. To state the criteria for the structural engineer's report which must be submitted in support of an application for SMP funding. To state the order for approved SMP funding applications, the process if there is insufficient funding for all approved applications, and the \$199.5 million maximum funding authority for the SMP.

Need for the Regulation

The purpose of the SMP is to save lives and prevent damage in the most vulnerable school facilities during a seismic event. This Section authorizes funding for "Seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA," as is needed for the purpose of implementing AB 127.

Section (a)(1), lines 9-10: It was necessary to delete:

~~for projects where the construction contract was executed on or after May 20, 2006, and the project funding provided shall be for the minimum work necessary to obtain DSA approval.~~

for the purpose of relocating these two SMP eligibility criteria to new subsection 1859.82(a)(1)(C) 1. and 2.

New Subsection (a)(1)(C), Line 1: It was necessary for purposes of clarity to group four SMP eligibility criteria in this new subsection.

New Subsection (a)(1)(C) 1.: It was necessary for purposes of clarity to re-state this existing SMP eligibility criterion in this new subsection. Contracts must be executed on or after May 20, 2006 because that was the effective date of AB 127, the authority for funding.

New Subsection (a)(1)(C) 2.: It was necessary for purposes of clarity to re-state this existing SMP eligibility criterion in this new subsection. Seismic mitigation project funding is limited to the minimum work necessary to obtain DSA approval as this is the most cost-effective means of applying the limited available State funds toward seismic mitigation projects.

New Subsection (a)(1)(C) 3.: It was necessary for purposes of clarity to re-state this existing SMP eligibility criterion in this new subsection. This criterion of the building being designed for occupancy by students and staff is more applicable to the eligibility criteria for SMP funding in this new subsection than as it was previously stated in Section 1859.2, "Definitions."

New Subsection (a)(1)(C) 4.: It was necessary to add the following:

4. The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code, Part 2, Chapter 18, section 1803A and with the concurrence of the California Geological Survey.

for the purpose of setting forth in detail the criteria for the structural engineer's report that is required for a SMP application for funding, and the requirement for the Division of the State Architect (DSA) to concur with the report, and the required documentation if the risk of injury is due to the presence of faulting, liquefaction, or landslide, because it was believed that accurate and authoritative supporting documents would be by an engineering geologist's hazard report in accordance with California Building Code Section 1803A and with the concurrence of the California Geological Survey.

New Paragraph following Subsection (a)(1)(C): It was necessary to add:

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

because review and approval by the DSA is required in these regulations and in accordance with Education Code Section 17310.

New Subsection (a)(1)(D): It was necessary to add:

- (D) Notwithstanding Sections 1859.93 and 1859.93.1, all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an Approved Application for funding.

because funding in the order of date received for approved applications has been the traditionally accepted method throughout the School Facility Program, and because this method was reviewed and accepted by the SAB Seismic Mitigation Sub-Committee, which held public meetings in March, April and May of 2011 to consider program changes to increase participation in the SMP.

New Subsection (a)(1)(E): It was necessary to add:

- (E) If an Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the Seismic Mitigation Program authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.

in order to clarify the funding process when the remaining SMP funds are less than the amount needed to fully fund the next approved project in line, and in order to clarify the decision options for the applicant next in line whose project cannot be fully funded, and in order to allow a fair opportunity for that project to later be fully funded from funds becoming available, and to re-state that the authority available for SMP funding is \$199.5 million.

New Paragraph following Subsection (a)(1)(E): It was necessary to add:

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

in order to provide clarity that unsuccessful applications would have to be returned to the applicant school district and not maintained by the Office of Public School Construction.

SUMMARY OF PUBLIC COMMENT AT THE JUNE 22, 2011 MEETING AND RESPONSE

Mr. Lyle Smoot, representing the Los Angeles Unified School District

Mr. Smoot addressed the Board and asked for clarification that the funding for the seismic mitigation projects was the \$199.5 million specified for seismic mitigation by the Legislature rather than funding from successful bond sales. He also raised a concern regarding the last project funded within the bonding authority of the Program. He stated that the way the language was written, if there were not enough funds remaining in bond authority to fully fund the last project, that project may either reduce its request to the available funding or refuse funding. He asked the SAB to consider that if a project received an unfunded approval and not a State apportionment, the project would be eligible for the balance of the initial funding request.

The Board considered Mr. Smoot's comments and addressed both of his concerns by approving modifications to Regulation Section 1859.82(a)(1)(E) as shown in the following by double underlining and strikethrough:

"If an Application for the seismic mitigation of the Most Vulnerable Category 2 Buildings cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount either reduce their request to the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the Seismic Mitigation Program authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section."

SUMMARY OF PUBLIC COMMENT DURING THE 45-DAY PUBLIC COMMENT PERIOD AND RESPONSE

Ms. Joyce Dillard submitted the following comments:

1. "Please ask that the Earthquake Mapping is consulted besides a Geological Hazards Report."
2. "Many parts of Southern California are not mapped by the California Geological Survey, and what appears to be no risk may, in fact, be an unmapped fault line."
3. "U.S. Geological Survey, Cal Tech or other experts need to be additionally consulted."
4. "Charter Schools are specifically vulnerable when their approvals are through the municipal planning unit and not the State."

In response to her comments, the OPSC, on behalf of the SAB, responded to Ms. Dillard that the California Geological Survey (CGS) currently reviews seismic mitigation applications using the latest available hazard maps and seismic criteria. The latest available earthquake maps and geologic hazards reports are consulted. The deletion of "2002 United States Geological Survey National Seismic Hazard Maps" from the regulations was because seismic data is continually being updated, and the Board did not want to require seismic evaluations based upon now ten-year-old criteria.

CGS is part of a consortium of seismic agencies called the Advanced National Seismic System (ANSS), of which the U.S. Geological Survey and California Institute of Technology are among the many contributing members. Therefore, the benefits of these members' inputs would be utilized in CGS seismic hazard evaluations.

Seismic hazard zone maps for Southern California are being updated on an ongoing basis. For each Seismic Mitigation Program application, the emergency regulations already allow the CGS to apply the latest available hazard maps and seismic data for each area.

Ms. Dillard's final comment regarding charter school approvals through local municipal planning units was addressed by stating the SAB did not have authority to impact the local planning process and that it was beyond the scope of these Seismic Mitigation Program regulatory amendments.

The OPSC presented an item to the SAB for final adoption of the emergency regulatory amendments (please refer to Tab #8). The SAB approved the recommendations which: 1) declared the ending of the 45-day public comment period; 2) determined that the public comments did not warrant revisions to the emergency regulatory text; and 3) approved the final adoption of the emergency regulatory amendments (as originally approved).

Technical Documents Relied Upon

The State Allocation Board's Action Item, dated June 22, 2011, entitled "Seismic Mitigation Program Regulatory Amendments."

Alternatives to the Proposed Regulatory Action that would be as Effective and Less Burdensome to Private Persons

The SAB finds that no alternatives it has considered would be more effective in carrying out the purpose of the proposed regulations or would be as effective and less burdensome to affected private persons than the proposed regulations.

Alternatives to the Proposed Regulatory Action that would Lessen any Adverse Economic Impact on Small Business

The SAB has determined that the proposed regulations do not affect small businesses.

Finding of Significant Adverse Economic Impact on Businesses

The SAB has determined that the adoption of the regulations will not affect businesses, including small businesses, because they are not required to comply with or enforce the regulations, nor will they be disadvantaged by the regulations.

Impact on Local Agencies or School Districts

The SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.