

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, August 23, 2006

EXCESSIVE COST HARDSHIP GRANT FOR  
ACCESSIBILITY REQUIREMENTS ON MODERNIZATION PROJECTS

PURPOSE OF REPORT

To request:

1. Adoption of amendments to the School Facility Program (SFP) Regulations regarding the Excessive Cost Hardship Grant for accessibility and fire code requirements in modernization projects.
2. Authorization to file the proposed regulations on an emergency basis with the Office of Administrative Law (OAL).

BACKGROUND

Currently under SFP Regulation Section 1859.83 (f), a modernization project is eligible for an amount equal to three percent of the modernization base grant for handicapped access and fire code requirements. At the May 2006 State Allocation Board (SAB) meeting, the Division of the State Architect (DSA) presented a report regarding the impact of accessibility requirements on modernization projects. The DSA report indicated that the additional three percent increase to the grant may be insufficient to fund the minimum work necessary for districts to meet accessibility requirements for some projects. The report also indicated that in some cases projects may be receiving more funding than necessary. Based on the report, the SAB requested that Staff consult with the SAB's legal counsel to determine if the SAB has the authority to change the grant through regulation. If it is determined feasible, the SAB requested that Staff return to the SAB with a recommendation.

AUTHORITY

The authority to provide the three percent excessive cost hardship grant for accessibility requirements is Education Code Section 17075.10(b)(2) which states that a school district may apply for hardship assistance if it can demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. The SAB Legal Counsel has opined that the authority to revise the grant for accessibility requirements is the same as the authority in which the three percent grant was based.

Government Code Section 4450(a) states that it is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities.

Pursuant to Government Code Section 4454(a), where state funds... are utilized for the construction of elementary school, secondary school, or community college buildings and facilities subject to this chapter, no contract shall be awarded until the Department of General Services has issued written approval stating that the plans and specifications comply with the intent of this chapter.

STAFF COMMENTS

The cost and the amount of work necessary to meet accessibility requirements varies from project to project. Because of this variance, Staff proposes to amend the current regulations so that the excessive cost hardship grant be based on the actual eligible hard construction costs to complete the minimum work necessary for access compliance as determined by the DSA and the Office of Public School Construction (OPSC). The district

STAFF COMMENTS (cont.)

will be required to submit a detailed cost estimate of all accessibility work included in a project which will be reviewed by the DSA and OPSC.

This grant is capped however, because if the costs to modernize a facility exceed 50 percent of the cost to replace the facility, Title 24 requires that the building must be rehabilitated to conform to the current building code. Therefore, the excessive cost hardship grant for access compliance cannot exceed the difference between 50 percent of the State and district share of the new construction grant (which represents approximately 50 percent of the replacement cost) and the sum of the State and district share of the project's modernization base grant. In addition, some of the modernization base grant will be considered funds available for access compliance as this type of work is integral to the modernization of a school and a portion of the base grant was intended to cover these essential upgrades. Accordingly, the excessive cost hardship grant for access compliance will be the difference of the actual costs required and verified by DSA and the OPSC subtracted by seven percent of the sum of the State and district share of the project's modernization base grant, not to exceed the cap as described above. The chart below illustrates how the excessive cost hardship grant cap is calculated, and how the seven percent is applied:

*Calculation of Maximum Grant (Cap) - Based on One Elementary Pupil*

State and District Share of New Construction Base Grant at 50%		State and District Share of Modernization Base Grant		Maximum Grant Allowable for Accessibility Requirements
\$7,082	-	\$5,098	=	\$1,984

*Examples of Calculation of the Excessive Cost Hardship Grant*

If the Minimum Accessibility Work Verified by DSA is:		7% of State and District Share of Modernization Base Grant		Difference	Excessive Cost Grant @ 100%
\$2,000	-	\$357	=	\$1,643	\$1,643
\$2,500	-	\$357	=	\$2,143	\$1,984 (cap)
\$350	-	\$357	=	-\$7	\$0.00

If the modernization project is replacement in like kind pursuant to Regulation Section 1859.79.2(a)(1), Staff is proposing that the excessive cost hardship grant be three percent of the modernization base grant.

The calculation of this grant was discussed at length at two Implementation Committee (Committee) meetings. Some Committee and audience members expressed concern with the development of a cap. They stated that some modernization projects exceed the 50 percent replacement cost even though the buildings are not brought into compliance with the current building codes, and therefore, sufficient funds to complete the desired project will never be received. However, if the project exceeds 50 percent of the replacement cost, the project must be brought into compliance with the current building codes. Staff believes that the modernization program was never intended to provide sufficient funds for school facilities to be compliant with the ever-evolving building code.

### STAFF COMMENTS (cont.)

Some Committee members and school district representatives expressed further concern with the determination that seven percent of the modernization base grant will be considered available funding for modernization accessibility requirements. Under the Lease-Purchase Program (LPP), ten percent of the hard construction funding provided for modernization was considered to be available for accessibility requirements. Under the SFP, the modernization base grant covers more than hard construction costs, therefore, 7.5 percent of the SFP modernization base grant is equivalent to ten percent under the LPP. With the understanding that at the time of the conversion to the SFP from the LPP that the modernization base grant is intended to cover hard construction costs including access compliance, Staff believes that recognizing only seven percent of the SFP base grant is more than reasonable.

Some members also requested that design fees for accessibility requirements be considered allowable, excessive hardship costs. Staff considered the request, however, design professionals must always consider accessibility requirements in any project and no additional costs will be incurred with the exception of the requirement of the submittal of a detailed cost estimate. Furthermore, since only seven percent, and not 7.5 percent, of the modernization base grant is being considered available for accessibility work and considering the base grant includes funding for design fees, design costs should not be considered excessive and therefore included in the determination of the grant.

Staff recommends that the SAB approve the attached emergency regulation amendments to the excessive cost hardship grant for access and fire code compliance. Currently, school districts have reported that they are experiencing difficulty completing their modernization projects as planned due to the amount of access compliance work required to receive DSA approval of the plans. Therefore, the OPSC recommends that the SAB adopt the attached regulations on an emergency basis in order to provide school districts immediate funding relief which appears consistent with the preservation of the public peace, health and safety, or general welfare.

### RECOMMENDATIONS

1. Adopt the proposed amendments to the regulations as shown on the Attachment and begin the regulatory process.
2. Authorize the OPSC to file these regulations on an emergency basis with the OAL.

### BOARD ACTION

In considering this item, the Board approved Staff's recommendations, and also included the following modifications:

- Recommendation 3 which would allow districts the option to choose between the existing regulations and the revised regulations proposed in this item.
- Recommendation 4 requiring Staff to review the policy in one year and report back to the Board.

ATTACHMENT  
State Allocation Board Meeting, August 23, 2006

Includes OAL approvals and Secretary of State filings of 10/08/99, 10/13, 12/22, 01/07/2000, 04/12, 06/26, 07/17, 09/12, 12/27, 01/02/2001, 04/05, 07/25, 08/13, 12/21, 04/10/2002, 06/01, 08/12, 09/09, 09/16, 10/04, 11/04, 01/16/2003, 02/06, 02/13, 02/27, 05/01, 07/07, 05/21/2004, 06/01, 07/02, 07/22, 11/02, 11/04, 11/10, 12/06, 12/20, 01/31/2005, 02/03, 02/15, 02/23, 02/28, 03/02, 04/26, 05/24, 05/26, 10/27, 10/31, 03/14 and 05/15/2006

...

Section 1859.83. Excessive Cost Hardship Grant.

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

...

- (f) Excessive cost due to ~~handicapped access~~ accessibility and fire code requirements.
- (1) ~~The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant for handicapped access and fire code requirements. The Modernization Excessive Cost Hardship Grant shall be 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):~~
- (A) Determine the difference of the verified hard construction costs of the minimum accessibility work necessary to receive approval from the DSA and seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.
- (B) Determine the difference of (1) minus (2):
1. Multiply the pupils requested in the application by the New Construction Grant.
  2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
- (2) Projects constructed pursuant to Section 1859.79.2(a)(1) may be provided a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.
- ~~(2)~~ (3) 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)~~ (4) 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 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.