

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 28, 2007

AMENDMENT TO THE EMERGENCY REPAIR PROGRAM REGULATIONS

PURPOSE OF REPORT

To request:

1. Adoption of the proposed regulatory amendments for setting the level of eligible application filing fees for projects seeking funding under the provisions of the Emergency Repair Program (ERP).
2. Authorization to file the proposed regulations with the Office of Administrative Law (OAL).

BACKGROUND

In January 2007, the State Allocation Board (SAB) adopted changes to the ERP that were required by the passage of Assembly Bill 607, Chapter 704, Statutes of 2006 (Goldberg). In addition, the Board approved several changes aimed at improving the Program and streamlining the application submittal and funding processes. However, the Board did not approve the proposal to deny ERP funding for administrative and application filing fees in response to concerns raised at the meeting. The SAB directed the Office of Public School Construction (OPSC) to discontinue providing funding for these costs until further review and discussion of the issue by the SAB Implementation Committee.

DISCUSSION

The initial Regulations governing the administration of the ERP were approved by the SAB at its January 2005 meeting. The initial Regulations did not set limits on cost categories for eligible projects and in the months following the implementation, there were a number of ERP applications submitted to the OPSC that included disproportionate funding requests for application filing fees. These costs typically represent fees paid to consulting firms for identifying projects eligible for reimbursement, filling out application forms, assembling the necessary supporting documentation and responding to OPSC questions, correspondence and analysis review on behalf of the district.

Because the law directs the SAB to provide funding for costs of repair projects, the OPSC believes that funding application filing fees could be considered unwarranted as they represent fees for seeking State funding rather than completing necessary repairs. At the same time, the district's lack of resources, staff time and expertise is a common concern of school districts. Although the newly adopted SAB forms and program revisions have been simplified and streamlined, some school districts may still need to retain consultants to aid them in seeking ERP funding.

At the March 2007 Implementation Committee meeting, the OPSC proposed to limit the amount of funding provided for administrative fees to two percent of the eligible project costs or \$5,000, whichever is less. The discussions at the Committee meeting provided an alternative suggestion of a five percent limit as reflective of a typical fee schedule of consulting firms. However, the OPSC believes that the two percent allowance represents a reasonable amount of assistance that districts could use towards paying the consultant fees while providing the least impact on available ERP funds designated for mitigating emergency conditions of school facilities.

School districts that do not have the staff resources to compile supporting documentation and complete the application may not be fully reimbursed for the fees they may incur for outside consulting services. However, the 100 percent reimbursement funding of eligible repairs from the State should still provide a sufficient incentive for school districts to seek ERP funding even if it means that some of the consulting fees may not be fully reimbursable.

DISCUSSION (cont.)

The two-percent limit would apply to the services contracted out by school districts for identifying repairs that have already been completed that qualify for ERP reimbursement, reviewing the project costs to eliminate ineligible expenditures, gathering supporting documentation, and preparing and filing applications with OPSC. This Regulation amendment does not propose to limit reimbursement for other soft costs expenditures such as inspection of components to verify qualifying emergency repairs (e.g. hiring a plumber to test and validate a leak in the gas line when gas odor is present), preparation of cost estimates, inspection, and testing for ERP projects.

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 with the OAL.

BOARD ACTION

In considering this Item, the Board approved Staff's recommendations. In addition, the Board requested Staff to report back in six months after the regulations have become effective on the status of the Emergency Repair Program. The report should consider the number of applications being submitted (reimbursement vs. grant applications), as well as the percentage of applications requesting reimbursement for administrative fees (amount requested vs. amount paid). The Board further clarified that the Emergency Repair Program projects approved in February and March 2007 be afforded the same opportunity for administrative costs, if included in their applications, as was approved by the Board today.

ATTACHMENT
PROPOSED AMENDMENTS TO THE
EMERGENCY REPAIR PROGRAM REGULATIONS
State Allocation Board Meeting, March 28, 2007

Amend Regulation Section 1859.323 as follows:

Section 1859.323. Eligible Project Costs.

~~Reimbursement Funding~~ will be provided to meet the LEA share of the repair costs of Emergency Facilities Needs as defined in Education Code Section 17592.72(c)(1). To be eligible for funding consideration, the total project cost request on the Form SAB 61-03 must be \$5000 or higher unless the LEA can justify its request for a lesser amount.

~~Reimbursement Funding~~ of eligible projects costs shall be limited to the minimum work required on existing structural components or building systems to mitigate the health and safety hazard-, plus application documentation preparation and submittal costs, if any, as permissible under Regulation Section 1859.323.2(j).

Replacement of existing structural components or building systems is permissible provided the project is in compliance with provisions of Section 1859.323.1.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.

Amend Regulation Section 1859.323.2 as follows:

Section 1859.323.2. Ineligible Expenditures.

An Emergency Repair Program Grant may not be used for any of the following:

- (a) New square footage, components, or building systems that did not previously exist.
- (b) Nonessential Repairs.
- (c) Cosmetic Repairs.
- (d) Land acquisition.
- (e) Furniture and equipment.
- (f) Salaries of LEA employees except when permitted pursuant to Public Contract Code Section 20114.
- (g) Costs covered under warranty or by insurance.
- (h) Costs normally borne by others including, but not limited to, public utility companies.
- (i) Costs to repair or replace facilities with structural damage if the project meets the facility hardship or rehabilitation criteria set forth in School Facility Program Regulation Sections 1859.82 and 1859.83(e).
- (j) Application documentation preparation and submittal costs that exceed two percent of the total project cost or \$5,000, whichever is less. The total project cost shall be calculated by adding all other eligible costs and re-calculated upon the grant adjustment determination pursuant to Section 1859.324.1.

Note: Authority Cited: Section 17592.73, Education Code.

Reference: Section 17592.72, Education Code.