

REPORT OF THE EXECUTIVE OFFICER  
State Allocation Board Meeting, September 26, 2007

DEFERRED MAINTENANCE PROGRAM  
REGULATION AMENDMENTS

PURPOSE OF REPORT

To request:

1. Adoption of proposed amendments to the Deferred Maintenance Program (DMP) regulations.
2. Authorization to file the proposed regulations with the Office of Administrative Law (OAL).

BACKGROUND

A discrepancy was discovered in the language of Education Code (EC) Section 17582 and DMP Regulation Section 1866.4.3 regarding the source of funds from which districts could deposit their DMP matching share.

Further, due to the implementation of the Charter School Facilities Program (CSFP), language needs to be added to DMP Regulation Section 1866.13 and the *Extreme Hardship Funding Application* regarding the duplication of applications.

AUTHORITY

EC Section 17582 directs the Board to establish procedures and policies necessary for the administration of the DMP.

Article 12, Sections 17078.52 through 17078.66 of the EC establish and govern the CSFP within the School Facility Program.

STAFF COMMENTS

The current regulations indicate that the contribution must be from any non-restricted fund; however, the law is less prescriptive. Staff recommends amending the DMP Regulation Section 1866.4.3, as shown on the Attachment, to correct the discrepancy.

A minor amendment to the DMP Regulations is necessary as a result of Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata and Nunez) to address the circumstances when extreme hardship projects involve work from other programs.

The proposed changes to the DMP regulations were presented to the SAB Implementation Committee at its September 2007 meeting and no objections were made. Staff recommends approval of the proposed amendments as provided on the Attachment. Upon adoption by the Board, the Office of Public School Construction (OPSC) will submit these regulations to the OAL.

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.

This Item was approved by the State Allocation Board on September 26, 2007.

## ATTACHMENT

### PROPOSED AMENDMENTS TO THE DEFERRED MAINTENANCE PROGRAM REGULATIONS State Allocation Board Meeting, September 26, 2007

#### Amend Regulation Section 1866.4.3

##### Section 1866.4.3 District Deposit of Matching Share.

To receive the basic grant pursuant to Section 1866.4.2, districts are required to deposit a matching share into their District Deferred Maintenance Fund established pursuant to EC Section 17582(a). The State will match this amount dollar-for-dollar not to exceed the basic grant apportioned by the Board. The district's deposit must be a cash contribution from ~~any non-restricted fund~~, any source not otherwise prohibited by law or regulation, unmatched carryover pursuant to Section 1866.4.4, or from the district's restricted Ongoing and Major Maintenance Account.

If the district has established an Ongoing and Major Maintenance Account under the provisions of EC Section 17070.75(b)(1), any annual deposits in excess of 2 ½ percent into that fund may be used towards the district's matching share. Districts may either:

- (a) Report the excess amount in the Ongoing and Major Maintenance Account being used towards the match on the Form SAB 40-21. These funds are not available for eligible deferred maintenance projects listed on the Form SAB 40-20, until transferred into the District Deferred Maintenance Fund.
- (b) Transfer the excess funds from the Ongoing and Major Maintenance Account to the District Deferred Maintenance Fund and report the total dollar matching share on the Form SAB 40-21. These funds are available to the district to perform work on the Form SAB 40-20.

Note: Authority cited: Section 15503, Government Code

Reference: Sections 17070.75, 17582, and 17584, Education Code.

#### Amend Regulation Section 1866.13

##### Section 1866.13. Duplication of Applications.

If the district's application for an extreme hardship grant involves proposed work also included in a SFP modernization project currently included on the SFP Modernization Unfunded List or the OPSC Modernization Workload List or in a CSFP Rehabilitation project, the district must certify that, after reducing the work to be funded with the extreme hardship grant from the SFP modernization or CSFP Rehabilitation project, the cost estimate for the remaining work in the modernization or CSFP Rehabilitation project is at least 60 percent of the total SFP or CSFP grant amount provided by the state and the district's matching share. The cost estimate may not include planning, tests, inspection or furniture or equipment. If the district cannot make this certification, the SFP modernization or CSFP Rehabilitation project must be withdrawn prior to the release of any extreme hardship grants to the district.

If the district's application for FRP grants, SFP modernization grants, or CSFP Rehabilitation grants involves work currently included on the district's Form SAB 40-20, pursuant to Education Code Section 17591, the district must eliminate the projects that will be funded with the FRP grants, SFP modernization grants, or CSFP Rehabilitation grants from the Form prior to the release of any FRP grants, SFP modernization grants, or CSFP Rehabilitation grants to the district.

Note: Authority cited: Section 15503, Government Code.

Reference: Sections 17582, 17587 and 17591, Education Code.

## GENERAL INFORMATION

This Form is used by a district to request Deferred Maintenance Program Extreme Hardship Grant funding for a critical project listed on the Five Year Plan, Form SAB ~~40-1~~ (New 04/02) ~~40-20~~ (Rev 01/05) that meets the criteria prescribed in Regulation Section 1866.5. The Office of Public School Construction (OPSC) will accept complete applications on a continuous basis; those received prior to the last working day in June are ensured consideration for funding by the State Allocation Board (SAB) in that fiscal year's funding cycle.

The OPSC processes complete applications based on the date received. The following documents must be submitted with this Form (refer to Regulation Section 1866.5.1):

- A report from either a licensed architect or structural engineer detailing how this project qualifies for an extreme hardship grant as defined in Education Code Section 17587 and Regulation Section 1866.5, a recommended solution to correct the problem, and a detailed description of the work being performed to mitigate the problem.
- A detailed cost estimate prepared by a licensed architect or contractor showing quantity and cost breakdowns supporting the construction costs listed on the *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02) (Rev 10/07). 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 (DSA). Items in the cost estimate shall be limited to only the minimum work necessary to mitigate the problem.
- Plot plan identifying the location of the work and 1A diagrams if available.
- A revised *Five Year Plan*, Form SAB 40-20 (New 04/02) including the critical project on the plan and identifying the project in Column 9 of the Form.

The amount of the extreme hardship grant and district contribution for the project shall be determined by the criteria outlined in Regulation

Section 1866.5.2. Critical projects that meet the criteria for an extreme hardship grant will be presented to the SAB on a continuous basis throughout the fiscal year. If funding is not available projects will be placed on an unfunded list based on priority order and on the date the complete application was received by the OPSC (refer to Regulation Section 1866.5.3).

Districts are advised that the OPSC must determine the critical project meets the criteria set in Education Code 17587 and Regulation Sections 1866.5 through 1866.5.3 to receive an extreme hardship grant, prior to construction costs being incurred on the project. Reimbursement of eligible architect or engineering expenditures will be allowed up to five months prior to the date that the hardship project is accepted for processing by the OPSC (refer to Regulation Section 1866.5.4).

DRAFT

**EXTREME HARDSHIP FUNDING APPLICATION**

## DEFERRED MAINTENANCE PROGRAM

SAB 40-22 (New 04/02 10/07)

**SPECIFIC INSTRUCTIONS**

1. **Type of Application** - Check the appropriate box that indicates the type of application the district is filing. A district with only one school may include other essential work in the application without being subject to the contribution requirements set forth in Regulation Section 1866.5.2. If the district checks the new project with other essential work box, the district will need to submit a *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02) (Rev 10/07) for each project category marked in Section 2 and a Form SAB 40-22 combining all the project information onto one form.
2. **Type of Project** - Check the appropriate box for the type of work the district is applying.
3. **Project Priority** - Indicate if the district is requesting Priority One Status for the project pursuant to Regulation Section 1866.5.3(c).
4. **Project Funding Order** - If the district has other critical project(s) awaiting funding on the Deferred Maintenance Extreme Hardship Unfunded List, prioritize the order of this application in relation to those project(s) for purposes of funding and district contribution requirements. (Refer to Regulation Section 1866.5.2 and 1866.5.3.)
5. **Project Duplication** - Refer to Regulation Section 1866.13.

Enter the School Facility Program (SFP) modernization or Charter School Facilities Program (CSFP) Rehabilitation application number(s) if any, if work included in those application(s) is also included in the total project cost of the critical project amount requested in Section 3 and the district cannot certify the SFP or CSFP Rehabilitation project(s) still meets the 60 percent commensurate test requirement in the SFP or CSFP Rehabilitation after deducting the duplicative work included in this application

6. **Project Costs - Enter:**

- I. Planning
  - a. Up to 12 percent of the construction costs reported in IIc are allowable.
  - b. If the critical project contains work that requires DSA approval, the fee charged by the DSA to review the plans is allowable.
  - c. Other planning costs associated with the project that may be allowable, provided an explanation of the costs is given.
  - d. The total of a through c.

## II. Construction

- a. The repair or replacement costs associated with the project. Eligible construction costs shall be limited to the minimum work necessary to mitigate the problem within the scope of the work identified in Section 2.
- b. Any other costs directly related to the project (i.e., asbestos removal). A detailed explanation of why the costs are necessary is required.
- c. The total of a and b.

## III. Testing

Costs associated with testing required during construction for the project. A detailed explanation of each test and the reason the test is required is needed. If multiple tests are being done indicate the quantity.

## IV. Inspection

If the project requires a certified DSA inspector the fee charged by the inspector during the legal duration of the construction contract is allowable. Back-up information supporting the cost is required.

## V. Contingencies

An allowance for unanticipated costs directly related to the critical project is provided as part of the budget for the project. This amount cannot exceed five percent of I through IV. The OPSC shall review all expenditures from this allowance to ensure the eligibility.

**Total Project Cost**

The total of I through V.

