

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, December 12, 2007

FINAL ADOPTION OF PROPOSED REGULATORY
AMENDMENT AND PROJECT INFORMATION WORKSHEET

PURPOSE OF REPORT

To request final adoption based on public comments submitted of a proposed regulatory amendment and Project Information Worksheet.

BACKGROUND

Education Code (EC) Section 17072.11(a)(3) stipulates that, "The board shall conduct an analysis of the relationship between the per-unhoused-pupil grant eligibility determined under this article and the per-pupil cost of new school construction for elementary, middle, and high school pupils."

EC Section 17072.11(b) stipulates that "On or after January 1, 2008, the board shall increase or decrease the per-unhoused-pupil grant eligibility by amounts it deems necessary to cause the grants to correspond to costs of new school construction, provided that the increase in any fiscal year pursuant to this section shall not exceed 6 percent." Due diligence needs to be undertaken in exercising this responsibility.

On September 27, 2006, the Board initially approved regulatory amendments to implement the grant increases authorized by AB 127, and the regulations were filed with the Office of Administrative Law (OAL). However, a proposed amendment to Regulation Section 1859.71 could not be implemented regarding additional pupil-grant increases because a "worksheet" referenced in the proposed text had not yet been approved by the SAB. The Office of Public School Construction (OPSC) worked closely with the California Department of Education and stakeholders to streamline the Project Information Worksheet and field test the document. The needed Project Information Worksheet was presented at the July and August 2007 Board meetings, and was adopted by the Board at its September 26, 2007 meeting.

Pursuant to Government Code Section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations, the Board provided a 15-day public notice period for the proposed regulatory amendment and Worksheet. Three public comments were received opposing the implementation of the Project Information Worksheet, which are responded to below and summarized on Attachment A.

AUTHORITY

The Administrative Procedure Act, Government Code Section 11346.8(a) states, "the state agency shall consider all relevant matter presented to it before adopting, amending, or repealing any regulation." Government Code Section 11346.9(a)(3) requires the Board to respond to public comments how it will "accommodate each objection or recommendation, or the reasons for making no change."

Education Code Section 17070.35(a) states, "In addition to all other powers and duties as are granted to the board by this chapter, other statutes, or the California Constitution, the board shall do all of the following: . . . (2) Establish and publish any procedures and policies in connections with the administration of this chapter as it deems necessary."

AUTHORITY (cont.)

Government Code Section 15503 states, "Whenever the board is required to make allocations or apportionments under this part, it shall prescribe rules and regulations for the administration of, and not inconsistent with, the act making the appropriation of funds to be allocated or apportioned. The board shall require the procedure, forms, and the submission of any information it may deem necessary or appropriate. . . ."

STAFF COMMENTS

Staff has reviewed the three public comments received and recommends that they not be implemented because of the following reasons:

- Comment number one asserts that requiring the Project Information Worksheet as a condition of receiving School Facility Program (SFP) funds or as part of an annual and final report exceeds the statutory authority of the Board. This comment fails to acknowledge the Board's broad authority under Education Code Section 17070.35 to adopt appropriate regulations and rules to administer the School Facility Program.
- Comment number two also alleges that the Project Information Worksheet exceeds the Board's statutory authority, and adds that the Board's original purpose for the Project Information Worksheet is being exceeded by adding two new purposes - - "bond accountability" and "status of the bid climate," which should require going through the regulatory process again. This comment objects to requiring the Project Information Worksheet before the release of State funds to districts because this could delay payments to contractors.
- Staff responds that "bond accountability" and "status of the bid climate" in the Project Information Worksheet is not a change in purpose, but pertains to the broad fiscal oversight responsibilities required of the Board. Such purposes are sufficiently related to the regulatory text that was originally adopted by the Board. Requiring the Project Information Worksheet for the release of State funds to school districts is an appropriate time because the districts will have just awarded their contracts and should have current cost information to report. Districts should not incur delays because project costs may be estimated on the initial Project Information Worksheet submittal.
- Comment number three asserts that the Project Information Worksheet is too burdensome and requires input by the project architect at additional expense to school districts. It claims there is an unclear and excessive purpose for gathering the cost data, that it should be simplified, and that it should not have to be submitted three times - - with the fund release request, with the annual expenditure report, and with the final close-out expenditure report. Finally, it criticizes a "one size fits all" approach when many different types of projects exist.
- Staff finds that the Project Information Worksheet is not unduly burdensome. The Project Information Worksheet was field tested. An architect is not required to submit data or sign the form. The purpose of the Project Information Worksheet is both clear and appropriate for the Board to assure that pupil-grant amounts are adjusted in light of current costs for new construction in accordance with Education Code Section 17072.11. The number of times (three) for submitting the Project Information Worksheet would occur over a period of years and is not burdensome and, furthermore, allows more detailed totals to be submitted later in the construction process. Staff disagrees that the Project Information Worksheet is "one size fits all," since data fields are provided for different component and construction types.

RECOMMENDATIONS

1. Declare that the 15-day public comment period for the proposed regulatory amendment and Project Information Worksheet shown on Attachment B ended on November 1, 2007.
2. Authorize the OPSC to make the non-substantive changes of numbering the pages of the Worksheet to facilitate its use and adding an Instruction heading that was inadvertently omitted.
3. Determine that the three public comments, as presented on Attachment A as Comments #1, #2, and #3, do not warrant revisions to the proposed regulatory amendment and Project Information Worksheet.
4. Approve the adoption of the proposed regulatory amendment and Project Information Worksheet as presented on Attachment B.
5. Authorize the OPSC to complete the rulemaking process by submitting the rulemaking file to the OAL.

ATTACHMENT A
PROPOSED RESPONSES TO PUBLIC COMMENTS

1. The Office of Public School Construction (OPSC) received and reviewed comments from Mr. Ted E. Rozzi, Chairperson of California's Coalition for Adequate School Housing (CASH), dated October 25, 2007, regarding the proposed amendments to Regulation Section 1859.71 and Project Information Worksheet. After considering his comments, the comments are not accepted.
2. The OPSC received and reviewed comments from Mr. Mark DeMan, Director, Facilities Grants and Funding, Los Angeles Unified School District (LAUSD), dated October 31, 2007, regarding the proposed amendments to Regulation Section 1859.71 and Project Information Worksheet. After considering his comments, the comments are not accepted.
3. The OPSC received and reviewed comments from Mr. Gordon Itow, Senior Director, Facilities Planning, Anaheim City School District, dated November 1, 2007, regarding the proposed amendments to Regulation Section 1859.71 and Project Information Worksheet. After considering his comments, the comments are not accepted.

Comment #1 Summary and Response:

Mr. Rozzi comments about the Project Information Worksheet being required to be submitted with the Forms SAB 50-05 and 50-06. He asserts that the SAB does not have the statutory authority to require submittal of the Project Information Worksheet as a condition of receiving School Facility Program (SFP) new construction funds or to require it as part of an annual and final expenditure report. He cites the Board's statutory authority in Education Code Section 17070.35 to "adopt rules and regulations . . . for the administration of this chapter" and "to determine eligibility to receive apportionments," but claims that requiring a Project Information Worksheet is broad and overreaching because it is not necessary to administer the SFP and does not serve to determine a district's eligibility to receive State funding under the SFP.

Mr. Rozzi distinguishes that Education Code Section 17072.11(a)(3) authorizes the SAB to analyze the per-pupil grant amounts versus current per-pupil school new construction costs, but does not authorize the resulting mechanism to be required as a condition of receiving State funds or as part of an annual and final expenditure report. He notes the Legislature's failure to include a Project Information Worksheet in the statutes governing eligibility determinations, release of funds to eligible districts, and expenditure reporting requirements. He concludes that the SAB would be imposing a requirement upon school districts beyond existing laws if the Project Information Worksheet were to be required as a condition of receiving SFP new construction funds or to require it as part of an annual and final expenditure report.

The Board considered this public comment noted above and determined that the comment does not warrant revisions to the regulations since these are the same comments that were made to the SAB at its public meeting in September 2007. The Project Information Worksheet is necessary and appropriate for the SAB to fulfill its statutory obligation to assure that pupil-grant amounts are adjusted appropriately in light of current costs for new construction in accordance with Education Code Sections 17072.10 and 17072.11. Furthermore, Government Code Section 15503 provides the authority for the SAB to require forms and the submission of any information it may deem necessary or appropriate.

(Continued on Page Two)

Comment #2 Summary and Response:

Mr. DeMan reiterates that the LAUSD shares the concerns raised by Mr. Rozzi of CASH. He adds that the original purpose granted to the SAB on September 27, 2006 for adopting the Project Information Worksheet is being exceeded. He writes that the original stated purpose was to capture the current costs to construct schools, as it relates to Education Code Sections 17072.10 and 17072.11 for adjusting pupil-grant amounts. However, when the Project Information Worksheet was submitted to the SAB on September 26, 2007, the purpose was changed to include use for "bond accountability" and "status of the bid climate." He asserts that such a change would require going through the regulatory process again, but that in any event, he finds no section in Chapter 12.5 of the Education Code authorizing the required submittal of such school construction data for these two additional purposes.

Mr. DeMan, therefore, opposes the proposed Project Information Worksheet and the requiring of it for the release of State funds. For example, he states, requiring the Project Information Worksheet as a condition of fund releases could delay payments to contractors or have other unintended consequences.

The SAB considered the public comment noted above and determined that the comment does not warrant revisions to the regulations since these were the same comments addressed to the SAB at its public meeting in September 2007. The Governor signed Executive Order S-02-07 on January 24, 2007, requiring all State agencies to ensure strict accountability and efficiency for the expenditure of State bond funds. The "bid climate" refers to the SAB maintaining awareness of rising construction costs that push bids too high for school districts to build planned projects within budget. Such purposes are sufficiently related to the regulatory text that was originally adopted by the Board.

Requiring the Project Information Worksheet for the release of State funds to school districts is an appropriate time because the school districts will have just awarded their contracts and should have current cost information to report. School districts will not incur delays because the Project Information Worksheet specifically allows project costs to be estimated. Project square footage figures for the Project Information Worksheet need not cause a delay because they are determinable from approved plans long before the district requests the release of State funds. Due diligence and recordkeeping are sufficient to complete and submit the Project Information Worksheet in a timely manner.

Additionally, the Project Information Worksheet is necessary and appropriate for the SAB to fulfill its statutory obligation to assure that pupil-grant amounts are adjusted appropriately in light of current costs for new construction in accordance with Education Code Sections 17072.10 and 17072.11. Furthermore, Government Code Section 15503 provides the authority for the SAB to require forms and the submission of any information it may deem necessary or appropriate.

Comment #3 Summary and Response:

Mr. Itow suggests that school districts are already overburdened with required forms and applications for the SFP, that the Project Information Worksheet duplicates the reporting of information to other State agencies, and that several sections will require completion by the project architect at additional expense to school districts. He claims that the purpose and methodology of the Project Information Worksheet are unclear, that it exceeds the purpose of gathering cost data, that it should be simplified, and that it should not have to be submitted three times - - with the fund release request, with the annual expenditure report, and with the final close-out expenditure report. Finally, he criticizes a "one size fits all" approach when many different types of projects exist.

The SAB considered the public comment noted above and determined that the comment does not warrant revisions to the regulations since the comments are basically the same comments presented by the previous two individuals. The Project Information Worksheet is not unduly burdensome, but benefits school districts by allowing pupil-grant amounts to keep current with school construction costs. An architect is not required to submit data or sign the form. The number of times (three) for submitting the Project Information Worksheet occurs over a period of years and allows more detailed totals to be submitted later in the construction process. The Project Information Worksheet is not a "one size fits all," since data fields are provided for different component and construction types.

Additionally, the Project Information Worksheet is necessary and appropriate for the SAB to fulfill its statutory obligation to assure that pupil-grant amounts are adjusted appropriately in light of current costs for new construction in accordance with Education Code Sections 17072.10 and 17072.11. Furthermore, Government Code Section 15503 provides the authority for the SAB to require forms and the submission of any information it may deem necessary or appropriate.

ATTACHMENT B

Amend Regulation Section 1859.71

Section 1859.71. Adjustment to the New Construction Grant.

The new construction per-unhoused-pupil grant amount, as provided by Education Code Section 17072.10(a), will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.

The new construction per unhoused-pupil grant amount, as provided by Education Code Section 17072.10(a), may be increased by an additional amount not to exceed six percent in a fiscal year, or decreased, based on the analysis of the current cost to build schools as reported on the worksheet required to be submitted with the Forms SAB 50-05 and 50-06 and as approved by the Board.

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.10 and 17072.11, Education Code.