

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, January 30, 2008

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 Assembly Bill 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 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 regarding 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."

(Continued on Page Two)

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 reviewed two of the public comments received from the Coalition for Adequate School Housing organization and the Los Angeles Unified School District 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 at the time of the release of State funds to school districts is appropriate because the districts will have 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.

Staff reviewed the third public comment received from the Anaheim City School District and recommends that the comments be considered in part for the following reasons:

- 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. However, in recognition of the public comments provided, staff is recommending alterations to the Project Information Worksheet to reduce some burden by eliminating an area of reporting duplication and to provide further clarity. The Project Information Worksheet was field tested. The purpose of the Project Information Worksheet is 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. Staff believes that the Project Information Worksheet is appropriate for the various types of projects, 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. Approve the non-substantive changes of numbering the pages of the Project Information Worksheet to facilitate its use and adding an Instruction heading that was inadvertently omitted.
3. Determine that the two public comments, as presented on Attachment A as Comments #1 and #2, do not warrant revisions to the proposed regulatory amendment and Project Information Worksheet.
4. Determine that the public comment, as presented on Attachment A as Comment #3, does warrant partial consideration, which has been incorporated to provide clarity to the proposed Project Information Worksheet.
5. Authorize the OPSC to complete the rulemaking process by submitting the rulemaking file to the OAL for the proposed regulatory amendment, which was previously approved by the Board on September 27, 2006, and the Project Information Worksheet as modified pursuant to this item and as shown on Attachment B.
6. Request staff to develop procedures in conjunction with the California Department of Education and the Division of the State Architect to acknowledge scope changes in school district projects.
7. Request staff to review and present proposed amendments to Regulation Section 1859.104.1 (material inaccuracies) at a future State Allocation Board meeting to clarify the purpose of the Project Information Worksheet as it relates to material inaccuracies.

BOARD ACTION

In considering this item, the State Allocation Board on January 30, 2008 adopted the staff's recommendations. In addition, the Board requested that staff return with feedback on the Project Information Worksheet six months from when the regulations are in effect.

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 will be considered in part for adoption.

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.

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. Finally, he criticizes a "one size fits all" approach when many different types of projects exist.

Comment #3 Summary and Response: (cont.)

The SAB considered the public comment noted above and determined that the comment does warrant partial consideration. Although staff finds that the Project Information Worksheet is not unduly burdensome, staff is recommending alterations to the Project Information Worksheet to reduce some burden by eliminating an area of reporting duplication and to provide further clarity. Staff believes that the Project Information Worksheet is appropriate for the various types of projects, since data fields are provided for different component and construction types.

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.

INFORMATION

The information collected using this form is necessary in order to conduct an analysis of the relationship between the per-unhoused-pupil grant eligibility and the per-pupil cost of new school construction for grades K-12 pursuant to Education Code Section 17072.11, to meet the requirements for bond accountability, and the status of the bid climate.

INSTRUCTIONS

This worksheet is to be completed and submitted with the *Fund Release Authorization* (Form SAB 50-05) for all new construction projects that are completing Part IV of the Form 50-05.

This worksheet is to be completed and submitted with the *Expenditure Report* (Form SAB 50-06) for all new construction projects that have received a fund release pursuant to Part IV of the *Fund Release Authorization*.

Attach to this form the accepted bid documents including additive/deductive alternates.

Completed By: Enter the name and title of the person completing this worksheet.

Phone Number: Enter the contact phone number for the person completing this worksheet.

Date Completed: Enter the date that the form was completed.

Application Number(s): Insert the application number provided by the Office of Public School Construction (OPSC). Include the project number(s) of any other associated State funded projects. (e.g. joint-use)

School District: Insert the name of the school district where the project is located.

County: Insert the name of the county where the project is located.

Project Tracking Number: Insert the project tracking number provided by the OPSC, the California Department of Education (CDE), and the Division of the State Architect (DSA).

Project Name: Insert the name of the project (ex. – ABC Elementary School).

Reporting Period: Indicate the time period that this form was filled out by checking the appropriate box. Enter the estimated percentage of the project completed. The percentage completed shall be the same as that which is reported on the *Expenditure Report*.

Project Funding

Please provide actual amounts when available and estimates as necessary. Indicate whether the amount reported is the actual or an estimate by checking the appropriate box.

1. Check yes or no to indicate if this is a financial hardship project.
2. Funds available (include site acquisition). If the project includes square footage from other State funded projects (e.g. joint-use), report the funds available from that project.
 - a. Enter the total actual amount of the State Apportionment(s) for this project (sum of 1 and 2).
 1. Enter the amount of the State Apportionment for this project
 2. Enter the amount of the State Apportionment for the joint-use project (if applicable).
 - b. Enter the estimated or actual amount of interest earned on State funds for this project.
 - c. Enter the total actual amount of the District Match for this project (sum of 1 and 2).
 1. Enter the amount of the District Match for this project.
 2. Enter the amount of the District Match for any joint-use project (if applicable).
 - d. Enter the estimated or actual amount of any additional local (district) funds that were necessary to complete this State funded project.

Please provide actual contract amounts when available and estimates as necessary. Indicate whether the amount reported is the actual contract amount or an estimate by checking the appropriate box.

1. Site Acquisition Costs
Enter the total cost for site acquisition, including State share, district share, and any additional local funds. Include any costs for environmental studies and fees.
2. Bid/Construction Contract(s) Data. If the bid(s) includes square footage for other State funded projects (e.g. joint-use), include all associated costs.
 - a. Enter the accepted base bid amount prior to any accepted additive/deductive alternates for all contracts. If there is more than one contract signed (e.g. multiple-prime, etc.) please enter the total of all base bids.
 - b. Enter the amount of all accepted additive/deductive alternates for all contracts.
 - c. Enter the amount of the total construction contract(s). Include the amount of any change orders or addendums, if applicable.
 1. Enter the amount of the building cost in the contract(s).
 2. Enter the estimated amount of the site development work, including service site, offsite, utilities, and general site, included in the contract(s).
 3. Enter the amount of any other construction costs included in the contract(s) (e.g. demolition, interim housing, Labor Compliance Program, General Condition fees, as applicable). If using construction management, enter any general condition fees in 5 below. *Do not include any costs listed in 5 below.*
3. Enter the amount of actual and estimated (not yet contracted, invoiced or obligated) soft costs for the project (e.g. tests and inspections, architect fees, etc.) *Do not include any costs reported in 4 below.*
4. Enter the amount of the estimated remaining hard costs not yet contracted, invoiced or obligated (e.g. portions of work not yet bid, etc.) that are necessary for the completion of this project. *Do not include any costs reported in 3 above.*
5. Enter the amount of Construction Management Fees. If the project is being bid as multiple-prime, include costs for general conditions, etc. *Do not include any costs listed in 2(c)(3) above.*
6. Enter the actual or estimated amount for project contingencies.
7. Enter the actual or estimated amount for furniture and equipment.
8. Enter the amount of the Total Project Cost (do not include site acquisition costs). This amount should be equal to the sum of 2c, 3, 4, 5, 6 and 7 above.

Joint-Use Information

1. Check yes or no to indicate whether the project includes a joint-use partner, even if the joint-use project does not include State funding. Enter the OPSC application number if applicable.
2. Check the appropriate box to indicate which type of joint-use partner is included in the joint-use project.
3. Check yes or no to indicate whether the joint-use partner is contributing capital funding towards this project. If applicable, enter the dollar amount the joint-use partner is contributing.
4. Check which facility(ies) are part of the joint-use project. If other is chosen, please explain the type of joint-use project.

Project Information

- Choose from the drop down menu the type of project that is being built (e.g. new school, addition, etc.)
- Choose from the drop down menu the type of school that best describes this project (e.g. elementary, middle, etc.)
- Select what outdoor facilities you have and how many of each are in the project. If the facility is considered multiple use, check the box that best represents what the facility will be used for the majority of the time. If the project consists of any other playfields not listed, check “other” and explain.
- Check the boxes of the grade levels in the project. Based upon the District’s loading standard, enter the number of pupils that can be served at each grade level.

- Enter the master plan site capacity of the project based on single-track use and local district loading standards. Based on teacher contracts and/or local loading standards this number **may be** different from the number of pupils requested on the *Application for Funding*.
- Enter the square footage of the parking structure (if applicable).
- Enter the total net useable site acreage of the project.

Component Types:

- Choose all components that are included in the project. Include the number of each type of facility. Indicate the number of each type of classroom building(s) (e.g. 8 permanent, 4 portable). Indicate if there are any stand-alone restroom buildings. If indicating “other” facilities, a detailed listing of those facilities is not required unless the facility being constructed is atypical or a non-standard facility. If so, then please explain.
- From the pull down menu, choose the main type of construction for each of the buildings in the project (e.g. permanent, modular, portable).
- Enter the square footage of each component that was in the DSA approved plans at the time the project was apportioned by the State Allocation Board (SAB). If more than one component is contained in the same building, in order to prevent duplication, report the square footage by each component. (e.g. library in administrative building, report the square footage under the library and administration under administration). If a building is a classroom building report the square footage of the entire building (e.g. hallways, mechanical area, teacher workrooms, etc.).
- At the time of fund release, only complete this section if there has been a change in scope in the DSA approved plans since the time the project was apportioned by the SAB. Enter the square footage of each component that is in the plans (including any adjustments for addendums or change orders) when the district submitted its *Fund Release Authorization*. Indicate the square footage of any stand-alone restroom buildings.
- Enter the square footage for each component in the plans (including any adjustments for addendums or change orders) at the time of the first annual expenditure report and at the time of the final expenditure report, ~~as applicable~~.

Total Square Feet All Facilities

- Enter the total building square footage for all facilities in the project. When calculating the square footage, include the total square footage identified on the DSA approved plans for all facilities. Be sure to use the same methodology when calculating square footage for each reporting period.
 - From the total square footage entered above, enter the amount of square footage that is considered stick-built.
 - From the total square footage entered above, enter the amount of square footage that is considered permanent modular.
 - From the total square footage entered above, enter the amount of square footage that is considered portable pursuant to Education Code Section 17070.15(j).

Total Building Cost (Per Square Foot)

- When completing the Worksheet for the first time, enter the original estimated building cost per square foot. For subsequent reports, enter the current estimated or actual cost per square foot. To determine the cost per square foot, divide the total building cost, excluding site acquisition and site development costs (service site, off-site, utilities, parking structures, and general site) by the total building square footage as reported.

Additional Information: This information is being collected to evaluate the bid climate.

1. Enter the number of bidders on this project. If more than one contract was signed for this project (e.g. Multiple-Prime), enter the average number of bidders per trade.
2. Enter the date(s) the bid(s) opened. If more than one bid date, enter the opening bid date of the first bid package.
3. Enter the number of times the project was re-bid, if applicable.

4. Describe the accepted additive/deductive alternates that were included in the project costs. Indicate whether they included facilities or building elements. If the additive/deductive alternate included buildings, please indicate the square footage.
5. Check yes or no to indicate if the contract(s) includes any facilities or other construction that have not yet been identified elsewhere on this form. If yes, explain what those facilities or construction include.
6. Check yes or no to indicate whether the SAB approved project was modified due to cost.
 - a. If, yes explain briefly what measures were taken (e.g. from permanent classrooms to portable etc.)
7. Indicate what facilities, components, or elements, if any, that were included in the ~~State Allocation Board~~ SAB approved project and were eliminated to meet the project budget have been eliminated. Indicate if any facilities, components, or elements, were added to the project. Provide a brief explanation as to why they were ~~eliminated~~ altered.
 - a. If the project received an Adjusted Grant fund release on or after November 1, 2007, check yes or no to indicate whether any facilities and/or square footage that was added or deleted was approved by the CDE, and/or the DSA, and/or the SAB. Please attach the appropriate documentation.
 - b. Check yes or no to indicate if the facilities are intended to be deferred to a later phase. If yes, please explain.

Please note: If you have, or are considering a deviation to the scope of work outlined in the SAB approved project plans, please consult with the CDE, the DSA and the SAB.

8. Check yes or no to indicate whether there were any local requirements or ordinances the district had to meet that were not covered within the State program(s) provisions (e.g. road or street improvements, utilities, or fees demanded by another local agency, etc.)
 - a. Check yes or no to indicate whether or not these costs were included in the construction contract.
 - b. If yes, describe the local requirement and the associated costs.
9. Check yes or no to indicate whether or not you utilized existing architectural plans from another project.
 - a. If yes, indicate how many times the plans have been re-used within the district. Indicate the name(s) of the project(s).
 - b. Indicate the name any other school districts that have used these plans, if known. Indicate the name of the architect who designed the plans.

Comments/Additional Information

Please provide any additional information about this project that you think will be helpful in completing the analysis.