

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

ADEQUACY OF NEW CONSTRUCTION GRANTS

PURPOSE OF REPORT

To provide a status on the review of the adequacy of the new construction grant to build new schools under the School Facility Program (SFP).

BACKGROUND

The State Allocation Board (SAB) requested Staff to form an ad hoc committee on grant adequacy (Committee) to determine if the SFP new construction grants are adequate to build schools in California. Specifically, the Board requested that the Committee address mainly two issues: the equitability of the SFP new construction base grant amount to the equivalent allowances provided under the Lease-Purchase Program (LPP) when the State converted programs in 1998; and, if the grants are sufficient to build a complete new school today. The Committee concluded that the new construction base grant was deficient at the time of conversion from the LPP to the SFP. One of the theories for the deficiency, at least in part, was that allowances for general site development were not included. As a result, regulations to provide an additional grant for general site development were approved by the SAB at the August 2006 meeting and were subsequently approved by the Office of Administrative Law. Districts can now receive this additional grant to complete their projects.

The Committee has been unable to determine if the grants are sufficient to cover the actual costs to complete new school projects today. The Committee previously requested data, in the form of a survey, from school districts on completed projects. Very few districts replied. When conducting a preliminary analysis of the information that was received, Staff discovered that a majority of the surveys were incomplete or the information requested was misunderstood resulting in an incomplete analysis. Some districts stated they did not want to complete the survey as they considered projects constructed two to three years ago too old for an analysis on the current climate of school construction. In addition, some districts expressed concern about how the data would be portrayed once it was collected.

Because of the lack of responses, there was no definitive grant adequacy data available during the bond discussions last year. Nonetheless, Assembly Bill (AB) 127, Chapter 35, Statutes of 2006 (Perata/Nunez) provided an increase to the new construction base grant of seven percent for elementary and middle school projects and four percent for high school projects beginning July 1, 2006. AB 127 also provides that, beginning January 1, 2008, the Board has the authority to annually increase the per pupil base grant amount by up to six percent, or reduce the per pupil base grant, by an amount determined based on an analysis of the current costs to build a school.

SUMMARY

The issue of the adequacy of the new construction grant is very complex. First, the Office of Public School Construction (OPSC) is reliant on data provided by others. In order to determine the adequacy of the grants today, it is imperative that a definition of what is a complete and adequate school is created and construction data is provided by the school districts so that a comparison of the two can be conducted to provide a defensible analysis and recommendation to the SAB. The OPSC has requested the Superintendent of Public Instruction to define a "complete school" and assist with identifying schools that were recently constructed that meet this definition. The California Department of Education indicated they had already begun this task. The OPSC will then request the cost data on those schools.

Secondly and more important, even in the event the adequacy of the grants is determined, the ability of school districts to construct complete schools may still not be mitigated. There are significant outside factors that may contribute to the ongoing inadequacy of the grants. This report summarizes those issues.

## DISCUSSION

### *Determining the Adequacy of the New Construction Grant*

There are currently two main challenges that hinder the Staff and the Committee's ability to determine the adequacy of the per pupil grants to build schools. First, although it is understood that the new construction grants were intended to provide half of the funds necessary to construct adequate facilities for a complete new school, there is currently no officially accepted definition of a "complete school". Absent a definition of a "complete school", there is nothing against which the Committee can definitively measure the appropriateness of the State's share of the funding being provided to cover the facilities being constructed. Second, the only cost information that the OPSC has available are the project plans approved by the Division of the State Architect and the amount of State funds apportioned and released for each project, as approved by the SAB. There is no complete, empirical project cost data such as bid documents, construction contracts, total project cost documentation, or square footage data regarding facilities actually constructed that has been made available to the OPSC (with the exception of data provided by a district for an upcoming appeal).

In order to continue the analysis on the grant adequacy issue, Staff believes that a "complete" school must be defined. The Board has requested the assistance of the Superintendent of Public Instruction in determining what constitutes a complete school. Once a complete school is defined, Staff believes that districts should be required to submit data on the projects that meet the criteria of a complete school. The results can be used to determine the adequacy of the new construction grants today by comparing the actual costs to build those projects to the amount of the grant received (both State and district share). Staff further believes that collecting project data from districts will also ensure that the OPSC is in compliance with the Governor's Executive Order on bond accountability. The Executive Order requires that the bond funds approved by the voters are spent efficiently, effectively, and in the best interest of the State while requiring that there are sufficient performance outcome measures in place. Staff will need to rely on districts for their cooperation in providing the data to accomplish this.

### *Consideration of the Entire Funding Model*

It is important to note that, when completing the analysis to determine the adequacy of the grants today, the entire funding model must be taken into consideration. The new construction base grant alone cannot be used to determine the adequacy of the grants, as several adjustments have been made to the total funding model in the last several years. Some of these changes include the calculation of the additional grant for urban/security and geographic location, the source for the yearly Construction Cost Index adjustment, the increase to the new construction base grant provided for in AB 127 beginning July 1, 2006, and the addition of the general site development grant. In addition, any changes to the base grant amount will also provide an increase to the excessive cost hardship grants, such as urban/security, geographic location, small size project, and new school project. It is also important to note that the grants provided should be paying only for the essential facilities of an adequate school, while any enhancements should be borne by the district unless those funds should otherwise be used to offset any financial hardship assistance from the State.

### *Maintaining the Adequacy of the New Construction Grant*

The OPSC, with input from the Committee, must also determine the methodology to be used to determine the adjustment of the per-pupil base grant on an annual basis beginning January 1, 2008, as required in law. It appears the best methodology will be determined by the change in construction costs (on price per square foot basis) from one year to the next based on data collected for each year. The data to conduct the analysis will be collected on a "Project Information Worksheet" that must be submitted with a request for construction funds to be released and with the reporting of project expenditures.

## DISCUSSION (cont.)

### *Grant Adequacy Concerns*

Staff and the Committee continue to meet to endeavor to determine whether the grants are adequate today. However, Staff is concerned that there is a misconception that increasing the State share of the new construction grant is a solution to the school districts difficulties in constructing school facilities. Any amount provided as an increase to the new construction grant may only contribute to future increases in school construction costs in California because there are too many other variables in the equation.

For instance, once the new grants provided by the State are known, the new grants will likely serve as the minimum floor of the cost to construct schools while the profit margins may continue to increase. In addition, an inundation of public work projects at one time has an effect on the bid climate, and with contractors that have the bonding capacity to do public work projects being limited, leads to a limited number of bids on a project (supply and demand). Further, the Public Contract Code "listing law" enables subcontractors to know how many opposing bidders are submitting bids to the general contractor on a project which can lead to inflated bids.

The issue of a district's local control of a project must also be factored in when determining whether the adequacy of the grants can be solved in a "one-size-fits-all" manner. Districts have local control over the choice and type of facilities constructed and the materials being used. While the grants may be sufficient to build a standard school, they are not adequate to support the construction of core facilities sized to accommodate future growth, a state-of-the-art performing arts facility, or an aquatic center. In addition, the way construction contracts are written can adversely impact the number of interested contractors. For example, if a contract is so overly prescriptive to be litigation proof, the result is a daunting document that may deter otherwise qualified contractors. Or, if the district's specifications identify only one or two products that can be used for a project and there is only one source or manufacturer for the product, this can limit the contractors that can competitively bid on the project, thereby increasing the bids. It is important to note that while these circumstances are and should remain local control issues, they are beyond the purview of the SAB and factor into the adequacy of the grant.

Other factors that adversely impact the adequacy of the grants are the high worker's compensation costs that are passed on to owners; changes in the building code requirements; inspection requirements; and, county/city imposed offsite improvements, etc.

Possible solutions to these concerns may include the need to address the Public Contract Code, bonding requirements, local construction contract requirements, worker's compensation costs, etc. via legislation or other means. Staff believes alternative funding methodologies may also be warranted and should be examined in determining the annual adjustment to the new construction grant, such as a grant provided on a dollar per square foot basis, based on the type of facility constructed, with a full and final apportionment provision (where no additional funding will be provided for increased project costs).

## RECOMMENDATION

Accept this report.

## BOARD ACTION

In considering this Item, the Board accepted the report. The California Department of Education indicated that they could supply to staff within 30 days many projects that have met Title 5 and are complete schools, and would subsequently provide a definition of a complete school. It was emphasized that the definition of a complete school is necessary as soon as possible in order to have a basis of comparison for the construction project and cost data collected and in ample time to meet the statutory timeline of January 2008.

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.

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

LABOR COMPLIANCE PROGRAM GRANTS

PURPOSE OF REPORT

To provide an update to the March 2006 report regarding the adequacy of Labor Compliance Program (LCP) apportionments.

BACKGROUND

At the July 2003 State Allocation Board (SAB) meeting, the Board approved regulations that provided a per-pupil grant increase to accommodate the State's share of increased costs of a new construction or modernization project for the initiation and enforcement of a LCP.

At the March 2006 SAB meeting, Staff presented a report to the SAB concerning LCP grant adequacy, which represented a small sample size of projects due to the vast majority of projects not yet due for audit. The sample size was inadequate to make an accurate determination of grant adequacy; therefore, Staff did not recommend any adjustments at that time.

This report provides an update to the March 2006 report on LCP grant adequacy.

AUTHORITY

Labor Code (LC) Section 1771.7 states in part that the SAB shall increase per-pupil grant amounts to accommodate the State's share of the costs of initiating and enforcing a LCP. The law provides that a School Facility Program project is eligible for an increase in the per-pupil grant amount if both of the following conditions are met:

- The project was or will be funded from the proceeds of Propositions 47 or 55.
- The Notice to Proceed for the initial contract for construction of the project was issued on or after April 1, 2003.

LC Section 1771.7 also provided for an exception to the full and final apportionment provisions in the law to accommodate LCP costs on projects that have already received their full apportionment amount without the LCP funding but were eligible for the funding.

DESCRIPTION

As of the January 2007 SAB meeting, the SAB has provided LCP funding for 3,342 projects. Since the March 2006 report, the sample size has increased from 61 projects to 245 projects, which is 7.3 percent of all projects that have received LCP funding. The sample size continues to be limited as the vast majority of the LCP-funded projects are not due for audit; thus, the cost data is unavailable. The LCP expenditures reported by the districts are compared to the total LCP grant (includes the State, financial hardship and district share). The LCP data as of February 2007 indicates the following for new construction and modernization projects:

New Construction – Sample Size of 51 Projects

LCP expenditures compared to the total amount of the LCP grant (includes the State, financial hardship, and district share – see Attachments A and C).

- 44 projects (86 percent of the projects) spent less than the total LCP grant; the average underspent amount is \$17,684 per project.

DESCRIPTION (cont.)

- 7 projects (14 percent of the projects) spent more than the total LCP grant; the average overspent amount is \$19,765 per project.
- Overall, the average LCP grant for 51 projects (includes the State, financial hardship, and district share) was \$30,598. Of this amount, the average expenditure was \$18,054, which resulted in \$12,544 excess funding per project. This means that these projects underspent by 40.9 percent on average.

Modernization – Sample Size of 194 Projects

LCP expenditures compared to the total amount of the LCP grant (includes the State, financial hardship, and district share – see Attachments B and C).

- 179 projects (92 percent of the projects) spent less than the total LCP grant; the average underspent amount is \$17,425 per project.
- 12 projects (6 percent of the projects) spent more than the total LCP grant; the average overspent amount is \$13,485 per project.
- 3 projects (2 percent of the projects) spent the same amount as the total LCP grant.
- Overall, the average total LCP grant for 194 projects (includes the State, financial hardship, and district share) was \$23,914. Of this amount, the average expenditure was \$8,671, which resulted in an average of \$15,243 in excess funding per project. This means that these projects underspent by 63.7 percent on average.

STAFF COMMENTS

Current data indicates that the majority of the projects in for closeout audit are not utilizing the full LCP grant allowance. Of our sample size of 245 projects currently in for closeout (51 new construction and 194 modernization projects), 190 projects have spent less than the State's portion of the LCP grant thereby not requiring the district to utilize the districts' share of the LCP grant.

Although the quantity of project data is relatively limited, the trends and patterns appear to support the conclusion that the full LCP grant is in excess of the districts' actual costs.

RECOMMENDATION

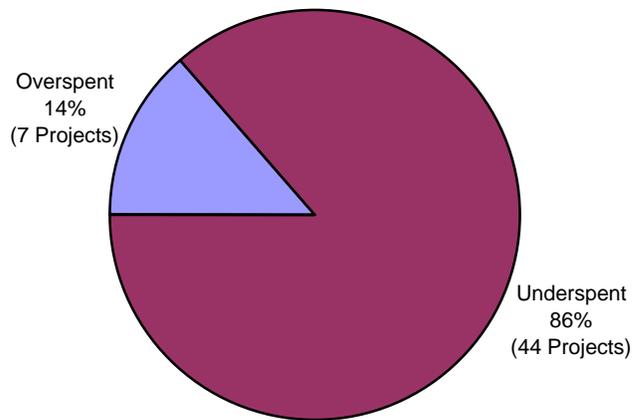
Accept this report.

BOARD ACTION

In considering this Item, the Board accepted the report. In addition, staff was requested to bring back regulatory recommendations that will adjust the Labor Compliance Program grant.

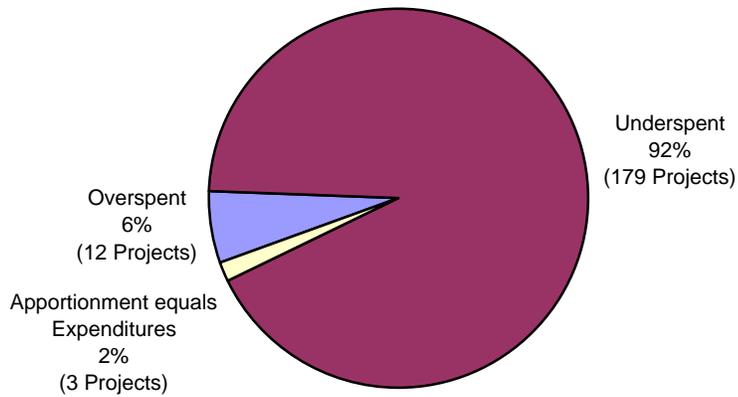
NEW CONSTRUCTION	TOTAL
Overspent	7
Underspent	44
Apportionment equals Expenditures	0

**ATTACHMENT A  
LCP STATE GRANT, FINANCIAL HARDSHIP, AND  
DISTRICT SHARE vs. LCP EXPENDITURES  
(NEW CONSTRUCTION)  
SAMPLE SIZE 51 PROJECTS**



MODERNIZATION	TOTAL
Number Overspent	12
Number Underspent	179
Apportionment equals Expenditures	3

**ATTACHMENT B**  
**LCP STATE GRANT, FINANCIAL HARDSHIP, AND**  
**DISTRICT SHARE vs. LCP EXPENDITURES**  
**(MODERNIZATION)**  
**SAMPLE SIZE 194 PROJECTS**



AMOUNT OF GRANT

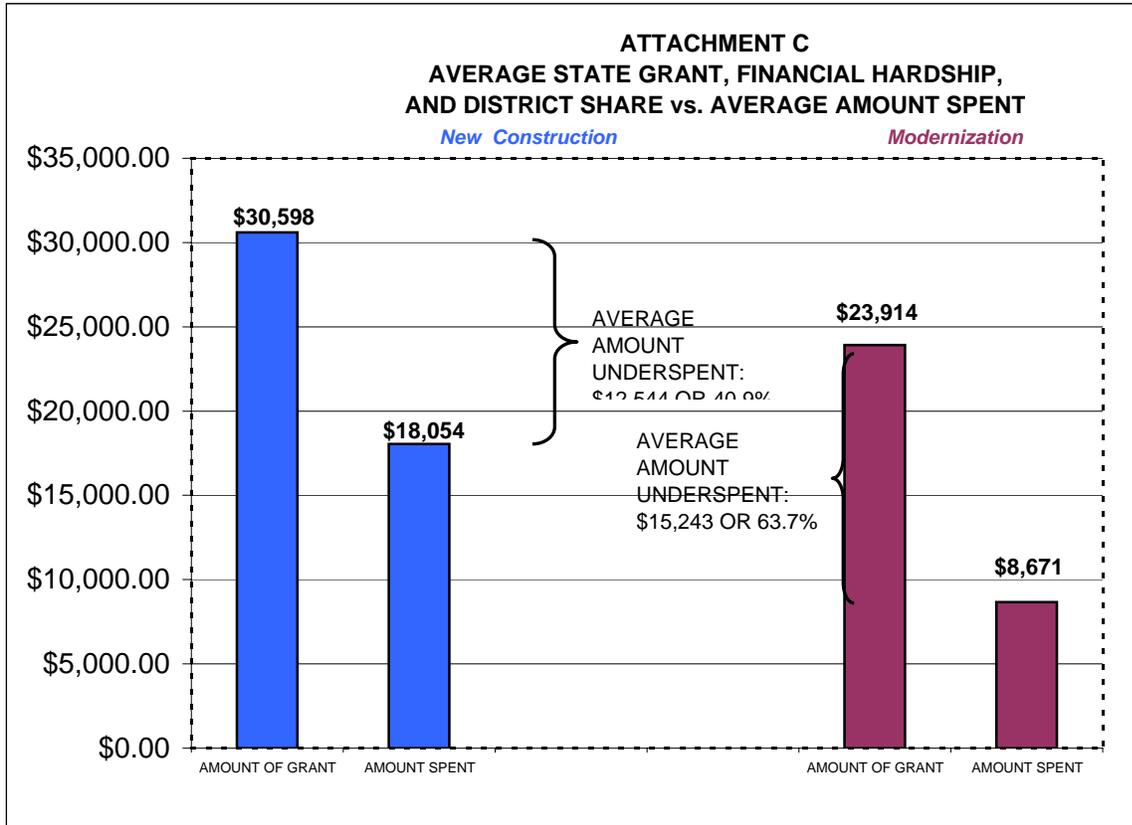
\$30,598.08

AMOUNT SPENT

\$18,054.19

AMOUNT OF GRANT  
AMOUNT SPENT

\$23,914.26  
\$8,671.10



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

LABOR COMPLIANCE PROGRAM GRANT FOR JOINT-USE PROJECTS

PURPOSE OF REPORT

To present a report as requested by the State Allocation Board (SAB) regarding Labor Compliance Program funding on School Facility Joint-Use Program projects.

BACKGROUND

At the February 2007 SAB meeting, the Board requested Staff to report back on the SAB's authority to utilize the revenues transferred into the 2004 Bond accounts to cover the costs of implementing Labor Compliance Programs (LCP) for School Facility Program (SFP) Joint-Use projects and on the SAB's authority to augment the per pupil grants for school districts that voluntarily initiate and enforce a LCP.

AUTHORITY

Labor Code Section 1771.7(a) requires school districts that are funding public works projects from the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 to initiate and enforce or contract with a third party to initiate and enforce a LCP for those projects.

Labor Code Section 1771.7(e) provides the authority for the SAB to increase the per pupil grant amounts provided for modernization and new construction projects to accommodate the state's share of the increased costs of those projects due to the initiation and enforcement of the LCP.

DISCUSSION

The SAB's Legal Counsel has confirmed his position that Labor Code Section 1771.7(a) defines and limits the application of mandatory labor compliance programs to projects using funds "derived from" the two specific bond acts noted above (see Attachment). The funds identified in the February 2007 SAB item being transferred into the 2004 State School Facilities Fund originated from other previous bond acts, lease payments, and sales revenue authorized by the State Relocatable Classroom Law of 1979 (Education Code Section 17085 et seq.). Therefore, a LCP cannot be required for School Facility Program (SFP) Joint-Use projects funded with revenues derived from the State School Building Aid Fund.

The SAB's Legal Counsel has opined that Labor Code Section 1771.7(e) provides the authority for the SAB to provide for additional grant amounts to school districts that voluntarily implement a LCP for their joint-use projects (see Attachment).

Staff estimates that the maximum State share of the funding needed to cover the increased costs for school districts to initiate and enforce LCPs for the joint-use projects approved at the February 2007 SAB meeting would be less than \$100,000. Staff has also confirmed that there are sufficient revenues in the State Building Aid Fund available for transfer into the Kindergarten-University Public Education Facilities Bond Act of 2004 in order for the SAB to provide the additional grant amounts to school districts that voluntarily implement a LCP for their joint-use projects, should that be the Board's will.

RECOMMENDATION

Accept the report.

BOARD ACTION

In considering this Item, the Board accepted the report. In addition, Staff was requested to bring regulatory recommendations to address Labor Compliance Program (LCP) issues regarding joint-use, new construction and modernization funding of projects as soon as possible, along with the item to adjust the LCP grants. Once these regulations are adopted by the Board and are effective, Staff is requested to present an item to provide LCP grants to those districts with qualifying Joint-Use projects that voluntarily initiate and enforce a LCP.

**Date:** March 21, 2007

**To:** Lori Morgan Acting Executive Officer  
State Allocation Board

**From:**  Garry Ness, Assistant Chief Counsel  
Department of General Services  
Office of Legal Services  
707 Third Street, 7<sup>th</sup> Floor  
West Sacramento, CA 95605

**Subject:** Labor Compliance Program Grant Augmentation

### QUESTION

At its meeting of February 28, 2007, the State Allocation Board asked our opinion on the following question:

If a district continues to voluntarily implement a labor compliance program on a project for which such programs are no longer mandated by statute, can the State Allocation Board continue to augment grant amounts of the purpose of reimbursing the district for the costs of initiating and enforcing a labor compliance program?

### CONCLUSION

It is our opinion that Labor Code section 1771.7(e) is sufficiently broad that it can be read to authorize the State Allocation Board to continue to provide for additional grant amounts under the circumstances described above.

### ANALYSIS

Labor Code section 1771.7 was enacted as part of Chapter 868, Statutes of 2002 (AB 1506, Wesson). Subdivisions (c) and (d) of Section 1 of Chapter 868 sets forth the Legislature's intent in enacting this law and read as follows:

(c) It is a matter of statewide concern that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by those school districts.

(d) Therefore, it is the intent of the Legislature in enacting this act that every school district in California pay the prevailing rate of per diem wages to workers employed on public works undertaken by these school districts.

Thus, it was the intent of the Legislature that school districts ensure compliance with the prevailing wage laws for workers employed on public works projects undertaken by these school districts.

Subdivision (a) of Labor Code section 1771.7, requires school districts that are funding public works projects from the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 to initiate and enforce or contract with a third party to initiate and enforce a labor compliance program for those projects. The statute does not require public works funded from other funding sources, including the Kindergarten-University Public Education Facilities Bond Act of 2006, to have a labor compliance program for those projects.

Subdivision (e) of Labor Code section 1771.7, however, directs the State Allocation Board to increase the per pupil grant amounts provided for modernization and new construction projects to accommodate the state's share of the increased costs of those projects due to the initiation and enforcement of the labor compliance program. It specifically provides:

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase as soon as feasible, but no later than July 1, 2003, the per pupil grant amounts as described in Sections 17072.10 and 17074.10 of the Education Code to accommodate the state's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of the labor compliance program.

Thus, the Legislature provided the Board with the ability to increase the state's share of increased costs of new construction or modernization projects to accommodate labor compliance programs. Indeed, the Board has adopted regulations that have implemented this requirement. Even though Subdivision (a) of the section was not amended to mandate labor compliance programs for projects funded from 2006 Bond Act proceeds, it is our opinion that labor compliance programs may continue to be voluntarily implemented by school districts in order to comply with the legislative intent expressed in Chapter 868, Statutes of 2002, to ensure that prevailing wage rates are paid on public works projects constructed by school districts.

Prior to the enactment of Labor Code section 1771.7, some school districts had established labor compliance programs for their public works projects. Because the costs of those programs were not specifically identified as an additional grant augmentation for purposes of the Leroy F. Greene School Facilities Act of 1998 (SFA), school districts were required to pay for the cost of those programs using the combination of state and local funding available at that time, without a further state augmentation. However, with the enactment of Labor Code section 1771.7(e), specific authority has been given to the State Allocation Board to provide additional funding to pay for the costs of such programs. Focusing on the legislative intent of Labor Code

section 1771.7 as specifically identified in Chapter 868, Statutes of 2002, it is our opinion that Subdivision (e) can be read to authorize the State Allocation Board to continue to augment the per pupil grant amounts as necessary to accommodate the state's share of the cost of implementing labor compliance programs if school districts choose to voluntarily implement such programs on SFA projects funded from other State bond proceeds.

Labor compliance programs have been identified by the legislature as a tool that can be used by school districts to ensure prevailing wage rates are paid. The legislature has further indicated that this is a matter of statewide concern. . "The fundamental goal of statutory interpretation is to ascertain and carry out the intent of the legislature (*People v. Cruz* (1996) 13 Cal. 4<sup>th</sup>, 764, 782)." By reading Subdivision (e) of Labor Code section 1771.7 to authorize the Board to continue funding labor compliance programs, we believe the Board will be continuing to carry out the expressed legislative intent of Section 1 of Chapter 868 of the Statutes of 2002.

If you have any questions, please contact me at (916) 376-5102.

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

OVERCROWDING RELIEF GRANT

PURPOSE OF REPORT

To provide an update on the ability of school districts to integrate the new Overcrowding Relief Grants (ORG) with the existing School Facility Program (SFP) grant to replace single-story facilities with multi-story facilities.

BACKGROUND

The proposed regulations to implement the new ORG were presented to and adopted by the State Allocation Board (SAB) at its February 2007 meeting. During the discussion a request was made to clarify the ability of school districts to combine ORG projects with SFP projects to replace single-story facilities with multi-story facilities. The SAB requested the Office of Public School Construction to work with the interested parties on this issue and to report back to the SAB on the outcome.

DISCUSSION

*SFP Grant to Replace Single-Story Facilities with Multi-Story Facilities*

Under existing SFP Regulation Section 1859.73.2, a district can request a grant, in addition to the traditional unhoused per-pupil grant, to demolish an existing single-story building and replace it with a multi-story building. The district, however, must increase the pupil capacity of the school site (add additional classrooms) provided that the addition of pupils to the site would not create a school with an inappropriate number of pupils in relation to the size of the site. In addition, the district must demonstrate that it is more cost effective to demolish the existing single-story classroom buildings and reconstruct them in multi-story buildings (with the new additional classrooms) than to build only the new classrooms on a new site. The additional pupil capacity that must be added is the greater of twenty percent of the existing permanent single-story pupil capacity of the school or 200 pupils. The additional grant provided is for the cost of demolition and replacement of the existing single-story buildings only. The new pupil capacity added would be funded through the SFP unhoused per-pupil grant.

*New ORG Program*

The new ORG provides the funding necessary for districts to relieve overcrowding at sites that have a pupil population density of more than 175 percent. The funding is limited to the reduction of the density to 150 percent of that recommended by the California Department of Education (although a district can choose to reduce the actual density to less than 150 percent), and can only be used to reduce the number of portable classrooms on overcrowded sites by the replacement of them with permanent classrooms at the existing site or the construction of new schools or classrooms at other sites. These grants do not enable the district to reduce the pupil density of an existing site when the classrooms are replaced on the overcrowded site nor do they increase the classroom capacity of a site or the district. Rather, they enable the district to use a school site more efficiently while retaining the same number of pupils at the school.

*Outcome of Discussions*

Staff met with the interested parties and determined that the combination of ORG with the SFP grant to replace single-story facilities with multi-story facilities should be allowed provided the district meets the requirements of SFP Regulation Section 1859.73.2 and the single-story facilities to be replaced do not garner funding under both the ORG and SFP (portables can be replaced under this SFP regulation as well as under the ORG). In this particular instance, a district must still demonstrate that it is more cost beneficial to tear down a single-story building and replace it with a multi-story building (with the ORG replacement classrooms being treated as the new additional classrooms) than to build the ORG project on a new site. The project could be located on the ORG eligible site or another existing school site. The existing SFP regulations and proposed regulations for the ORG do not need to be amended as they do not prevent this circumstance.

(Continued on Page Two)

DISCUSSION (cont.)

*Further Considerations*

While this immediate concern has been resolved, during the discussions it became more evident that even with the infusion of substantial State bond dollars over the last few and upcoming years, including the Critically Overcrowded Schools (COS) Program, ORG, and SFP, the density of many of the impacted school site(s) will not be alleviated in the end. With the COS Program, districts were able to receive a preliminary apportionment for sites that had a pupil population density of more than 200 percent to reduce the density to 150 percent. Districts still have to demonstrate new construction eligibility to receive funding, as the funding received under the COS is used to construct additional schools in the neighborhood. However, the COS does not typically result in a district tearing down existing classrooms at the COS site, therefore the existing site in many cases will likely serve the same or larger number of pupils that originally attended the school as the students that used to be bussed out of the attendance area would return to the school of residence. In other words, the density of the site will remain the same even though additional classrooms and schools are built in the neighborhood. In essence, the COS program serves more for the purposes of enabling a district to eliminate or scale down the use of bussing and to eliminate multi-track year round education, while utilizing existing capacity.

Under the ORG, even if a district replaces its portable classrooms with permanent classrooms on the ORG site permitting the limited land area of the school site to be used more efficiently, the density of the site will remain the same. And in the instance where a district replaces the portables on the ORG site with permanent classrooms at another existing site (including the example where a single-story structure is replaced with a multi-story facility), the ORG site density is reduced, however the other school site's density is impacted. In fact, the addition of classrooms on an existing site or at other school sites could conceivably enable those sites to qualify as overcrowded. It is recommended that future policy discussions take into consideration State general obligation bond dollars that have already been provided to a district to assist in the relief of overcrowding and that site density alone is not necessarily the sole factor that should dictate a district's need for overcrowding relief.

RECOMMENDATION

Accept the report.

BOARD ACTION

In considering this Item, the Board accepted the report. In addition, Staff indicated that they would meet with Mr. English to clarify concerns and report back, as needed.

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

FINAL ADOPTION OF PROPOSED REGULATORY AMENDMENTS  
FOR REPAYMENT SCHEDULES FOR AMOUNTS DUE TO THE STATE

PURPOSE OF REPORT

To request final adoption of the proposed regulatory amendments, based on public comments submitted, pertaining to repayment schedules for amounts due to the State.

BACKGROUND

On October 25, 2006, the State Allocation Board (SAB) adopted proposed emergency regulations in order to implement Assembly Bill (AB) 607, Chapter 704, Statutes of 2006, to allow a repayment schedule under the School Facility Program (SFP) to repay amounts due to the State rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. Financial close-out audits on SFP projects occasionally require refunds to the State in amounts that could cause a district to be in jeopardy of becoming financially insolvent and subject to oversight requirements. Because it was expressly required by AB 607, this regulatory action permits districts to apply for a repayment schedule only after showing that it is necessary to prevent severe financial hardship. The SAB's action established specific criteria for applicant school districts to provide evidence demonstrating severe financial hardship.

Public comments were received from two individuals and one public entity requesting specific language changes to the Board's action, as summarized on Attachment A. The SAB must consider any public comments received before approving the final adoption of proposed regulatory amendments.

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 SAB to respond to public comments in the rulemaking file how it will "accommodate each objection or recommendation, or the reasons for making no change."

STAFF COMMENTS

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

- Comment number one suggests that the regulation language be changed to allow repayment schedules for any requesting school district. This is contrary to the provision of the authorizing statute and does not meet the intent or spirit of the statute.
- Comment number two would change the financial reporting relationship between county offices of education and school districts when amounts are owed to the State. The SAB provides separate apportionments directly to either school districts or county offices of education. There are no joint apportionments. To incorporate this suggestion in regulation would not be serving the majority of the school community as a whole, not be in the best interest of the State, and contrary to the provision and the intent of the authorizing statute.

(Continued on Page Two)

### STAFF COMMENTS (cont.)

Staff reviewed the public comments received by the California Department of Education (CDE) and recommends that the comments be implemented due to the following reasons:

- The comments suggested that charter schools be included in the repayment schedule process. Staff recommends that the suggestions be incorporated for charter schools established under Article 12 of Chapter 12.5 of the Education Code. This would maintain equitability and consistency for purposes of Chapter 12.5.
- The comment regarding the reporting hierarchy between the CDE, the County Office of Educations (COE), school districts, and charter schools when severe financial hardship condition is substantiated and should be incorporated. It is logical that the CDE would notify the Office of Public School Construction (OPSC) when a COE experiences severe financial hardship, that a COE would notify the OPSC when a school district experiences severe financial hardship and the charter school's authorizing entity would notify the OPSC when a charter school experiences severe financial hardship.
- The last comment suggested that the CDE would not need to certify the financial condition of a school district for a repayment schedule. Staff recommends that the suggestion be incorporated since the reporting hierarchy in the above bullet illustrates the manner by which the entities will notify the OPSC.

### RECOMMENDATIONS

1. Declare that the 45-day public comment period for the proposed regulations shown on Attachment B ended as of March 19, 2007.
2. Authorize the OPSC to make available the amended regulatory text based on incorporation of the public comments accepted, pursuant to Government Code Section 11346.8(c).
3. Determine that the public comments, as presented on Attachment A as Comments #1 and #2, do not warrant revisions to the proposed regulatory amendments.
4. Determine that the public comments, as presented on Attachment A as Comment #3, does warrant revision to the proposed regulatory amendments.
5. Approve the adoption of the proposed regulatory language for repayment schedules as presented on Attachment B.
6. If no public comments are received, based on the newly adopted regulatory language, authorize the OPSC to complete the rulemaking process by submitting the rulemaking file to the Office of Administrative Law.

### BOARD ACTION

In considering this Item, the Board approved the staff's recommendations. The Board requested that staff meet with Mr. Elatar, of San Bernardino City Unified School District, to determine if his specific comments merit subsequent regulatory changes at a future date.

ATTACHMENT A  
PROPOSED RESPONSES TO PUBLIC COMMENTS

1. The Office of Public School Construction (OPSC) received and reviewed comments from Mr. Wael Elatar, dated February 26, 2007, regarding the proposed amendments to the State Allocation Board's (SAB) School Facility Program (SFP) regulations which would allow a repayment schedule under the SFP to repay amounts due to the State, rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. After considering his comments, the proposed changes are not accepted for adoption.
2. The OPSC received and reviewed comments from Mr. Donald Kenneth Shelton, dated February 27, 2007, regarding the proposed amendments which would allow a repayment schedule under the SFP to repay amounts due to the State, rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. After considering his comments, the proposed changes are not accepted for adoption.
3. The OPSC received and reviewed comments from Ms. Susan Lange, with the California Department of Education, dated March 19, 2007, regarding the proposed amendments which would allow a repayment schedule under the SFP to repay amounts due to the State, rather than a lump sum payment within 60 days, or forcible collection action by the State Controller's Office. After considering her comments, the proposed changes are accepted for adoption.

Comment #1 Summary and Response:

Mr. Elatar acknowledges that the proposed regulation permits districts to apply for a repayment schedule only upon a showing that it is necessary to prevent severe financial hardship. He contends that "a district could have a healthy general fund but still have a hardship in making a single facility related payment versus a time payment." He requests that districts have the right to decide whether to use a repayment schedule or not.

The SAB considered the public comment noted above and determined that the comment does not warrant revisions to the regulations because the legislative language expressly required that districts be permitted to apply for a repayment schedule only after showing that it is necessary to prevent severe financial hardship.

Comment #2 Summary and Response:

Mr. Shelton suggests adding three paragraphs to Regulation Section 1859.106.1, "Repayment of State Funds." His "additions are intended to address the situation of joint projects between county offices of education and school districts, and to specifically address the joint projects of the Los Angeles County Office of Education and the Lancaster School District . . .".

Mr. Shelton proposes adding to this Regulation Section certain sentences from Education Code Sections 17076.10 and 17076.10(c)(2). It is unnecessary to repeat the wording of Education Code sections that are already referenced by number in the text of the regulation section.

Finally, Mr. Shelton requests language in the Regulation Section specifying that:

"For special education projects that are implemented in partnership between a county office of education and a school district for the purpose of providing an instructional environment on a regular school campus with the least amount of physical restriction for students with disabilities, Education Code Section 17076.10(c)(2) is interpreted in a manner that applies the five-year repayment provisions to the subject school district, if the school district is required by the county office of education to repay the amount identified. This interpretation will apply regardless of whether the audit was applied to the project of the county office of education or the project of the school district."

The SAB considered the public comments noted above and determined that the comments do not warrant revisions to the regulations because apportionments are made by the SAB directly to individual school district or county office of education projects. This would go beyond the scope of the authorizing statute as well as impact the integrity of the regulation.

Comment #3 Summary and Response:

Ms. Lange suggests that charter schools be included in the repayment schedule process. Additionally, the reporting hierarchy between the CDE, COEs, school districts, and charter schools when severe financial hardship condition is substantiated should be changed in the regulation.

The SAB considered the public comments noted above and determined that the comments warrant revision to the regulation. By allowing charter schools in the repayment schedule process ensures equitability and consistency for purposes of charter schools established under Article 12 of Chapter 12.5 of the Education Code. The reporting hierarchy allows appropriate notification to the OPSC when a COE, school district or charter school experiences severe financial hardship.

## ATTACHMENT B

### Amend Regulation Section 1859.106

#### Section 1859.106. Program Accountability Expenditure Audit.

...

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Sections 17072.13 and 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. ~~Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251(b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50(b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. ~~Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).~~

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.13, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

Adopt Regulation Section 1859.106.1 as follows:

#### Section 1859.106.1. Repayment of State Funds.

Upon adoption of the audit findings by the Board and in lieu of the collection procedures outlined in Education Code Section 17076.10(c)(1), a school district, county office of education, or charter school may request a repayment schedule of up to five years, in equal annual installments, if the total repayment of State funds within 60 days of the Board action would cause the school district, county office of education, or charter school to fall into fiscal distress. School districts, county offices of education, or charter schools requesting a repayment schedule must be in a severe hardship condition as evidenced by at least one of the following criteria:

- (a) The district or county office of education is listed on the current CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
  - (b) The amount due to the State for one or more projects would cause the district or county office of education to be listed on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education current report. The county office of education must submit a letter to the Office of Public School Construction (OPSC) on behalf of its representative school districts for consideration substantiating that the repayment will place the district on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education both of the following documents to the OPSC on behalf of the district for consideration: The CDE must submit a letter to the OPSC on behalf of the county office of education for consideration substantiating that the repayment will place the county office of education on the CDE List of Negative and Qualified Certifications of School Districts and County Offices of Education.
- (1) A letter substantiating that the repayment will place the district on the CDE list.
  - (2) A CDE certification of negative financial condition.

(c) The amount due to the State for one or more projects would cause the charter school severe financial hardship. The charter school's authorizing agency must submit a letter to the OPSC on behalf of the charter school for consideration substantiating that the repayment may result in the charter school being unable to meet its financial obligations for the current or subsequent two fiscal years.

The repayment schedule shall include interest at the same rate as that earned on the State's Pooled Money Investment Account on the date a repayment schedule is approved by the Board.

The repayment schedule will commence on July 1 of the fiscal year following the repayment schedule approval date.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35 and 17076.10(c), Education Code.

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

IMPLEMENTATION OF SENATE BILL 1415  
PROPOSED REGULATIONS

PURPOSE OF REPORT

To request:

1. Adoption of the proposed regulations to implement how the site sale proceeds may be used as a result of Senate Bill (SB) 1415.
2. Authorization to file the proposed regulations with the Office of Administrative Law (OAL).

BACKGROUND

Prior to the recent code change, the proceeds from the sale of surplus property may be deposited in the General Fund of a school district for any General Fund purpose if the school district governing board and the State Allocation Board (SAB) determine that the district has no anticipated need for additional sites or building construction for the five-year period following the sale or lease, and the district has no major deferred maintenance needs. After the SAB determination and General Fund deposit, the school district may not apply for State funding for five years.

DESCRIPTION

SB 1415, Chapter 810, Statutes of 2006 (Scott) was chaptered on September 30, 2006 and amends Education Code (EC) Section 17462, which requires school districts to use the funds derived from the sale of surplus property for Capital Outlay purposes or maintenance of school district property.

SB 1415 modifies EC Section 17462 to extend the lock-out period to file applications for school funding, following the sale or lease of surplus property, from five years to ten years with regards to the district's anticipated need for additional sites, building construction, and major deferred maintenance requirements. It also limits the authority of a school district to use proceeds from the sale of surplus property for any General Fund purpose. It establishes the following requirements for the use of proceeds from the sale or lease with the option to purchase of school district property:

- Provides that the site sale proceeds be used for "One-time Expenditures."
- Prohibits the use of site sale proceeds for "Ongoing Expenditures."

STAFF COMMENTS

SB 1415 requires the SAB to adopt regulations that define "On-going Expenditures" for purposes of EC Section 17462(a). By utilizing the SAB's Implementation Committee meeting as a forum to gather input from interested parties, the Office of Public School Construction (OPSC), with input and concurrence from the California Department of Education, has developed proposed regulations contained in the Attachment to implement SB 1415. Upon adoption by the Board, the OPSC will submit these regulations to the OAL.

RECOMMENDATIONS

1. Adopt the proposed 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 recommendation. In addition, Staff was requested to seek a legal opinion from the Attorney General whether the use of funds would be considered a one-time expenditure or an ongoing expenditure pursuant to these regulations if they were used for the fiscal solvency of a district's health and/or retirement program.

ATTACHMENT  
IMPLEMENTATION OF SENATE BILL 1415  
PROPOSED REGULATIONS  
State Allocation Board Meeting, March 28, 2007

Title 2: Administration  
Division 2: Financial Operations  
Chapter 3: Department of General Services  
Subchapter 4: Office of Public School Construction  
Group 1: State Allocation Board  
Subgroup 3.5. Regulations Relating to Surplus School Property; Use of Proceeds

Section 1700. Definitions.

For the purpose of the provisions of Education Code Section 17462, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

"One-time Expenditures" means costs paid by the general funds of a school district that are nonrecurring in nature and do not commit the school district to incur costs in the future, and are exclusive of Ongoing Expenditures.

"Ongoing Expenditures" means costs paid by the general or special funds of a school district in support of employee salaries, benefits and other costs that are associated with ongoing and sustained operations and services.

Note: Authority cited: Section 17462, Education Code.

Reference: Sections 17462 and 17463.8, Education Code.