

STATE ALLOCATION BOARD
SUB-COMMITTEE ON SEISMIC MITIGATION PROGRAM
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Table of Contents

1.0 Purpose

2.0 Background

3.0 Discussion and Decisions

4.0 Primary Options

4.1 Adding Building Types

4.2 Lowering Spectral Acceleration

5.0 Secondary Options

5.1 Voluntary Seismic Upgrades

5.2 Reserving Bond Authority, State and Local Match, and Loans

5.3 Interim Housing

6.0 Authority

1.0 PURPOSE

To present Seismic Mitigation Program updates and program regulatory amendment proposals in order to promote further participation in the Seismic Mitigation Program (SMP).

2.0 BACKGROUND

The Office of Public School Construction (OPSC) presented a second report to the Seismic Mitigation Subcommittee (Committee) on April 26, 2011 that included: a brief and detailed chronology of changes to the SMP, an update relative to the structural evaluations, information about the Division of the State Architect's (DSA) efforts to further define "imminent collapse," and information related to incremental seismic upgrades. Options for amending the program were presented with the report including lowering the Spectral Acceleration (Sa) factor incrementally over time, re-evaluating the list of potentially eligible buildings, and discontinuing the current more restrictive SMP by redirecting the residual funds to create a newer, less restrictive program.

The Committee reviewed and discussed the three options. The Chair expressed a preference for the option which will reduce the Sa factor; however, another Committee member was concerned that lowering the Sa factor incrementally over time, as presented in option one, and linking those intervals to periods of eligibility would not be supported and may result in less vulnerable buildings receiving funding preference. The Committee also expressed concern that the current SMP is too restrictive and expressed the need to have objective standards in crafting and reviewing seismic engineering reports commissioned by local school districts. A Committee member expressed a preference for option three to redirect the residual SMP funds into the Facility Hardship program, with different, less restrictive criteria to qualify for SMP funding.

Following a discussion from Committee members, OPSC staff, and stakeholders, the Committee tasked the OPSC, DSA and California Seismic Safety Commission (CSSC) to present to the next Committee hearing joint departmental recommendations on structural engineering reports as they apply to the SMP. Specifically, what objective standards will apply to seismic structural engineering reports to determine a school building's hazard, vulnerability and resulting risk? The OPSC was also tasked to research further and provide an updated report on incremental seismic upgrades, program qualification options for the SMP, and interim housing options.

3.0 DISCUSSION AND DECISIONS

Research in Relation to a More Flexible SMP

The April 26, 2011 Committee report presented on option three to discontinue the current SMP and redirect bond authority (following a carve-out of funds for previously recognized SMP projects) to create a newer, less restrictive program. The Committee directed staff to collaborate with CSSC and DSA to develop objective standards to apply to structural engineering reports. This option would allow for a structural engineer to certify to a building's seismic deficiencies, along with DSA concurrence, using the American Society of Civil Engineers (ASCE) guidelines as published in ASCE 31. Following extensive discussions with trained professionals from the CSSC and DSA this more open ended option is not recommended at this time. Professionals from both offices asserted that, "the highest potential to enhance student safety resides in identifying those buildings at potential risk due to strong ground shaking as measured by the spectral acceleration." Additional facts raised during the discussion included:

- Using spectral acceleration is the objective basis of ground shaking intensity.
- Ground shaking represents the dominant hazard in a seismic event as opposed to other hazards such as liquefaction or ground faulting.

In those cases of localized issues that deal with faulting, liquefaction, landslide, or other identified risk, the SFP Facility Hardship regulations remain applicable. Those sites where the District can demonstrate that the health and safety of the pupils is at risk may qualify for Facility Hardship grant funding.

To assist the Committee in reviewing the options to be considered, the options are segregated into Primary Options for consideration, which include Building Type and Spectral Acceleration options and Secondary Options for consideration, which include Voluntary Seismic Upgrades, Reserving Bond Authority, and Interim Housing.

4.0 PRIMARY OPTIONS

Following discussions with trained professionals (CSSC and DSA) the following options are submitted for the Committee's consideration.

4.1 Reduce the Sa Factor

Reduce the Sa factor to either 1.60g or 1.55g.

Criteria Change	Estimated Additional Buildings*
Reduce Sa to 1.60g	83 (1.60g-1.67g)
Reduce Sa to 1.55g	16 (1.55g-1.59g)

***Number of buildings does not include the addition of building types.**

Pros:

- Allows for additional projects on additional sites to become eligible for SMP funding.
- Allows for the State's limited Proposition 1D SMP bond authority to continue to be directed toward those school buildings having the higher risk of poor performance during a seismic event.
- Lowering the Sa factor is consistent with the existing focus on ground shaking as the most prevalent hazard from a Statewide perspective based on known seismic risks.

Con: The number of additional potentially eligible buildings is considerably higher than buildings already identified as eligible, potentially extending the eligibility beyond available bond authority.

4.2 Building Type

If the committee elects to add building types, based on input from representatives from the CSSC and the DSA, the following two building types would be recommended for inclusion of definition of "Most Vulnerable Category 2 Buildings" as they are the next highest risk using Hazards United States (HAZUS) methodology for relative risk of collapse:

1. RM1 - Reinforced Masonry Bearing Wall with Flexible Diaphragms
2. C2A - Concrete Shear Wall with Flexible Diaphragms

Criteria Change	Estimated Additional Buildings
Add RM1 Building Type	189
Add C2A Building Type	

***Number of buildings assumes the Sa factor is 1.68g.**

Pros:

- Allows for additional buildings to qualify for SMP.
- Allows for the State's limited Proposition 1D SMP bond authority to continue to be directed toward those school buildings having the higher risk of poor performance during a seismic event.

Cons:

- The number of additional potentially eligible buildings is considerably higher than buildings already identified as eligible, potentially extending the eligibility beyond available bond authority.
- This option may not increase program participation because the eligibility would extend to the same school sites that may already have qualifying facilities that have not participated for other reasons.

5.0 SECONDARY OPTIONS

5.1 Voluntary Seismic Upgrades

The SMP provides funding for eligible buildings to be replaced or rehabilitated to comply with current building code requirements. For many school districts contributing new construction and modernization matching funds may be limited by budgetary constraints. Not all districts are able to qualify for financial hardship assistance. SMP projects can be costly when buildings are brought up to current building code to meet all structural, fire and life safety, access compliance code requirements and disruptive for school staff and students while the work is being completed.

Stakeholders have stated that meeting the SMP 50 percent local matching share on projects continues to be a serious impediment to school districts trying to access SMP grant funding. Full scope SMP projects not only include the costs associated with the seismic work, but also other fire/life safety requirements and other eligible SFP grants. Expanding the SMP to allow for voluntary, also known as incremental, seismic upgrades when the full scope of comprehensive seismic rehabilitation is not feasible may provide relief to this problem. This also provides a potential second option to school districts that are unable to qualify for financial hardship or provide the 50 percent matching share.

These voluntary SMP projects can be specifically designed to only address critical and necessary structural repairs/retrofits (deficiencies), as long as the scope of the project does not exceed 50 percent of the replacement value of the building. These projects may reduce school district matching share, site disruptions and the need for interim housing. This incremental SMP approach can be integrated into on-going facility maintenance and capital improvement operations to minimize cost and disruption. This approach focuses on necessary repairs that will decrease the vulnerability of school buildings to earthquakes at the most appropriate and convenient times, such as during summer break periods, thus potentially eliminating the need for interim housing.

Voluntary seismic upgrades could be integrated into the Primary Options presented.

5.2 Reserving Bond Authority and 50/50 State and Local Share

At the April Subcommittee meeting, staff was requested to explore options for reserving funds and the required 50/50 local match for the SMP.

Reserving Bond Authority

An apportionment is defined by the Education Code (EC) to mean “a reservation of funds for the use of eligible new construction, modernization, or hardship approved by the board for an applicant school district”.

There are currently four programs within the SFP that grant apportionments to projects without DSA and California Department of Education (CDE) approved plans. Both the Career Technical Education Facility Program (CTEFP) and Joint Use programs allow for SAB apportionments before DSA and the CDE plan approvals are submitted. Districts have one year to submit them, and after submittal, districts have 18 months to request funds. This provision is made in statute for the Joint Use Program and in regulation for the CTEFP. The Critically Overcrowded Schools (COS) Program and the Charter School Facility Program (CSFP) provide a “preliminary apportionment” and a “final apportionment”. The EC defines “preliminary apportionment” to mean an apportionment made for eligible applicants in advance of full compliance with all of the application

requirements otherwise required for an apportionment. Both of these programs have a statutory framework that allows for this model.

The SMP is a subset of new construction; therefore the same requirements apply to these projects. EC Sections 17072.30 and 17070.50 do not allow the Board to grant apportionments prior to the district obtaining CDE and DSA approval of the plans and specifications for the project. Districts may request a conceptual approval of a SMP project in order to determine eligibility for the program.

Staff consulted legal counsel regarding the Board's ability to reserve bond authority and was advised that this is not allowable as it would conflict with the statutory definition of an apportionment. Since a conceptual approval is not an apportionment, it does not reserve bond authority, nor does it guarantee funding. However, it is useful in that it grants notification that a project is eligible for the program.

Staff proposes the following option in keeping with the statutory framework of the program:

Establish a two step application process for the SMP for the purpose of establishing a known universe of projects within the available bond authority. Close the program to additional applications once sufficient eligibility has been established to exhaust the SMP bond authority.

Step 1- Eligibility Determination

The applicant submits a project for conceptual approval to determine eligibility for the SMP. The Board approves the project as eligible to participate.

Step 2 – Complete Funding Application

Within the required timeline specified in the initial eligibility determination (typically 18 to 24 months), the applicant submits a complete funding application with the approved plans and specifications for the project. The Board grants an unfunded approval or apportionment as appropriate at the time. Steps 1 and 2 may be combined into one Board approval.

Step 3 – Close Program

Eligibility determinations are accepted up to the remaining amount of bond authority remaining. Once all bond authority is estimated to be exhausted, the program will be closed to additional applications until such a time as additional bond authority is available through withdrawals or other means.

Pro:

- Gives districts time to obtain the necessary CDE and DSA plan approvals, while maintaining greater assurance that bond authority may be available for the project(s).
- The 18 to 24 month timeline is consistent with conceptual approvals provided for all Facility Hardship and rehabilitation projects.
- Since the eligibility determination is based on a preliminary cost estimate without CDE and DSA approved plans and specifications, the Board has the flexibility to approve an adjustment to the final apportionment as needed.
- If the bond authority for SMP is consumed, districts may consider applying for other fund sources such as Modernization if it is available.

Cons:

- An eligibility determination may not result in a completed project. Accounting for these projects when closing the program could divert funds from projects that are shovel-ready, thereby reducing the positive impact State school construction bond dollars have in creating jobs and stimulating the State's economy.

- The eligibility determinations are based on preliminary cost estimates, which are not as accurate as the final cost estimate based on the DSA-approved plan and specifications.
- If the Board considers this option, it may wish to evaluate the current 18 to 24 month timelines for conversion from conceptual approval to submittal of a complete funding application and not allow extensions.

Next Steps

Regulation changes would be necessary to formalize the process.

50/50 State and Local Matching Share Requirement

Some stakeholders have identified the 50 percent local matching share requirement as a barrier to participation in the SMP for school districts. The local match is a key statutory component of the SMP. EC Section 17075.10(b)(2) states that “funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis.” Amending the 50 percent local match may also violate bond covenant. The Proposition 1D pamphlet distributed to California voters states that “districts would be required to pay 50 percent of new construction and earthquake-safety projects (unless they qualify for State hardship funding.) The district match can come from a variety of sources, including local general obligation bonds, developer fees, Mello-Roos, Certificates of Participation, or Tax and Revenue Anticipation Notes. The Board can waive all or a portion of districts’ matching share if the district qualifies for financial hardship criteria.

Staff consulted legal counsel on the subject as well. Counsel noted that the EC Section 17075.10 (b) provides two different ways that a district can qualify for hardship assistance.

- (1) The district has both a hardship and is not financially capable of providing matching funds.
- (2) The district can provide 50 percent matching for seismic mitigation work. If a district is unable to demonstrate that it is “not financially capable of providing a matching share,” then it can only participate by providing that matching share.

According to counsel, the SAB does not have the authority to modify a statutory requirement. EC Section 101012 (d) provides authority to the legislature “to adjust amounts specified” in the individual bond acts. However, it must be by 2/3 vote and it must only be if the change is “consistent with and furthers the purpose” of the bond act. Modifying the matching share requirement would go beyond adjustments to the specified amounts and would also not be consistent with the purpose of the bond act. If the voter guide for Proposition 1D informs that the program requires a 50 percent matching share, then any change to that requirement would not be consistent with the Act of 2006.

Loans for the Matching Share

The statutes pertaining to both the CTEFP and the CSFP contain provisions for a loan, which allow applicants’ required local match to be paid back to the State over time with interest. Statute precludes CSFP and CTEFP projects from participation in the financial hardship program.

Staff consulted with legal counsel on the subject of providing loans to districts for the local matching share. Other than the CSFP and the CTEFP, there are no provisions within the SFP that would provide authority to the Board to offer loans to supplement the district’s matching share requirement. Because the EC specifically provides for loans for some programs but not all programs, there is no authority to provide loans for the SMP.

Providing a loan for the district’s local match would require a statutory change.

5.3 Interim Housing in Facility Hardship/Seismic Projects

The outreach efforts by Staff and feedback from some stakeholders, which was discussed at prior Committee meetings, indicated that one of the barriers preventing their participation in the SMP was due to the fact that no additional allowance is provided for Interim Housing (IH).

Staff previously obtained legal advice on this issue. Counsel opined that statute does not allow additional grants for IH. Should the Committee wish to make an alternate interpretation, Staff has outlined guidelines for implementing eligible costs for IH.

Guidelines for Determining Eligible IH Costs

If State funding for IH were to be approved staff suggests the following criteria for determining eligible costs:

- If available, the district would first house displaced pupils in available classrooms on the current site or at nearby schools that have unused capacity where students could be temporarily housed.
- The district must demonstrate that there is a need for the IH.
 - A comparison will be done between the enrollment at the site and the site's capacity that is based on State loading standards. This will ensure that the number of leased classrooms is equal to what is necessary to adequately house the students.
- The IH must be included in the final DSA approved plans. The classrooms intended for such use must be clearly labeled.
- The monthly or annual lease amount for IH will be verified with the current rates for the lease of like buildings in the same geographical area (i.e. – Southern California, Bay Area, etc.)
- The allowance for IH will be limited from the commencement date of the construction contract (Notice to Proceed) through the end of the contract. Should the district choose to lease temporary classrooms beyond the number of months in the construction contract, the additional costs will be district funded.
- If another SFP project is performed simultaneously or overlapping and the IH is shared for both projects, an appropriate pro-rate will be applied to the IH costs that are eligible in the SMP project.
- IH will not be factored in when calculating the Cost Benefit Analysis which determines if the project is to be a replacement or rehabilitation application.

Districts may or may not be aware of the need for IH at the time of the conceptual phase of the SMP project. If IH was not included in the project costs at the time of conceptual approval, districts will have the option to report and request the IH funding when they apply for full funding. The same criteria noted above will be used to determine the eligible costs for the IH.

6.0 AUTHORITY

SFP Regulation 1859.82

A district is eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. A facility hardship is available for: (a) new classrooms and/or subsidiary facilities (corridors, toilets, kitchens and other non-classroom space) or replacement facilities if: The facilities are needed to ensure the health and safety of the pupils if the district can demonstrate to the satisfaction of the Board that the health and safety of the pupils is at risk. Factors to be considered by the Board shall include the close proximity to a major freeway, airport, electrical facility, high power transmission lines, dam, pipeline, industrial facility, adverse air quality emission or other health and safety risks, including structural deficiencies required by the Division of the State Architect (DSA) to be repaired, seismic mitigation of the Most Vulnerable Category 2 Buildings as verified by the DSA, traffic safety or because the pupils reside in remote areas of the district and transportation to existing facilities is not possible or poses a health and safety risk. The total available funding for seismic mitigation related and ancillary costs for the Most Vulnerable Category 2 Buildings is \$199.5 million for projects where the construction contract was executed on or after May 20, 2006, and the project funding provided shall be for the minimum work necessary to obtain DSA approval.

EC Section 17070.15

(a) "Apportionment" means a reservation of funds for the purpose of eligible new construction, modernization, or hardship approved by the board for an applicant school district.

EC Section 17070.50.

The board shall not apportion funds to any school district, unless the applicant school district has certified to the board that the services of any architect, structural engineer, or other design professional for any work under the project have been obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and has obtained the written approval of the State Department of Education that the site selection, and the building plans and specifications, comply with the standards adopted by the department pursuant to subdivisions (b) and (c), respectively, of Section 17251.

EC Section 17072.30.

(a) Subject to the availability of funds, and to the determination of priority pursuant to Section 17072.25, if applicable, the board shall apportion funds to an eligible school district only upon the approval of the project by the Department of General Services pursuant to the Field Act, as defined in Section 17281, and certification by the school district that the required 50 percent matching funds from local sources have been expended by the district for the project, or have been deposited in the county fund, or will be expended by the district by the time the project is completed, in an amount at least equal to the proposed apportionment pursuant to this chapter, prior to release of the state funds.

(b) This section is operative January 1, 2008.

EC Section 17075.10

(a) A school district may apply for hardship assistance in cases of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, the need to repair, reconstruct, or replace the most vulnerable school facilities that are identified as a Category 2 building, as defined in the report submitted pursuant to Section 17317, determined by the department to pose an unacceptable risk of injury to its occupants in the event of a seismic event.

(b) A school district applying for hardship state funding under this article shall comply with either paragraph (1) or (2).

(1) Demonstrate both of the following:

(A) That due to extreme financial, disaster-related, or other hardship the school district has unmet need for pupil housing.

(B) That the school district is not financially capable of providing the matching funds otherwise required for state participation, that the district has made all reasonable efforts to impose all levels of local debt capacity and development fees, and that the school district is, therefore, unable to participate in the program pursuant to this chapter except as set forth in this article.

(2) Demonstrate that due to unusual circumstances that are beyond the control of the district, excessive costs need to be incurred in the construction of school facilities. Funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis from funds reserved for that purpose in any bond approved by the voters after January 1, 2006. If the board determines that the seismic mitigation work of a school building would require funding that is greater than 50 percent of the funds required to construct a new facility, the school district shall be eligible)(2) states that "funds for the purpose of seismic mitigation work or facility replacement pursuant to this section shall be allocated by the board on a 50-percent state share basis.

EC Section 17075.15 sets forth the criteria for the Financial Hardship programs.

EC Section 17077.45

(c) On July 1 of each year the board shall apportion to qualifying applicant school districts those funds that it determines are available for the purpose of this article. The board shall not release funds to a qualifying applicant until the project plans have received all approval required pursuant to this chapter, including, but not limited to, the approval of the Division of the State Architect. If the project does not receive all necessary plan approvals within one year of the date of the apportionment, the board shall rescind the apportionment.

EC Section 17078.10 defines for the COS "preliminary apportionment" to mean an apportionment made for eligible applicants in advance of full compliance with all of the application requirements otherwise required for an apportionment.

EC Sections 17078.22 and 17078.52 set for the requirements for a preliminary apportionment under the COS and CSFP.

EC Section 17078.72

(h) The [CTEF] program shall allow the local contribution to be paid over time should sufficient local funds not be immediately available. The board may provide for a repayment schedule consistent with subparagraphs (C) and (D) of paragraph (1) of subdivision (a) of Section 17078.57. The board shall not waive the local contribution on the basis of financial hardship or on any other basis.