

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 24, 1999

AMENDMENTS TO SB 50 EMERGENCY REGULATIONS

PURPOSE OF REPORT

To present proposed amendments to the SB 50 Emergency Regulations.

DESCRIPTION

On November 18, 1998, the State Allocation Board (SAB) adopted Emergency Regulations for the implementation of SB 50, the new School Facility Program (SFP). These Regulations were filed with the Secretary of State on December 3, 1998, and are effective for 120 days, until April 2, 1999. The required 45 day public comment period, which ended on February 8, 1999, allowed interested parties to file written comments regarding the regulations. The Office Public School Construction (OPSC) has received numerous comments regarding these regulations and is in the process of developing final proposed amendments which will be submitted to the SAB for consideration on April 28, 1999. As a result, the OPSC has requested the Office of Administrative Law (OAL) readopt the emergency regulations which will provide up to an additional 120 days in which to submit the final regulations.

Included in the written comments are two requests shown on the attached Exhibits that require immediate attention by the SAB. One issue clarifies the allowable uses of modernization funds as several applications are awaiting processing pending direction by the SAB. The other issue addressed an expansion of off-site development cost to include additional sidewalks when needed for the health and safety of the pupils.

The SAB considered these two issues at the meeting on February 24, 1999, but took no action. The SAB directed that the issue regarding the use of modernization funds be reviewed by the SAB Implementation Committee before consideration by the SAB. The SAB further directed that the issue regarding off-site development sidewalks be reviewed by legal counsel and appropriate legislative staff prior to consideration by the SAB.

RECOMMENDATION

Approve the recommendations as shown on Exhibit A, which directs staff to include the amendment in the final regulations when they are submitted to the OAL.

BOARD ACTION

In considering this Item, the Board took the following actions:

1. Approved the amendment to Regulation Section 1859.79.2, (Exhibit A/modernization) as presented.
2. Did not approve amendment to Regulation Section 1859.76 (b) (2), (Exhibit B/sidewalks) as presented.

EXHIBIT A

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 24, 1999

AMENDMENT TO SB 50 EMERGENCY REGULATIONS

PURPOSE OF REPORT

To present a proposed amendment to the SB 50 Emergency Regulations regarding the uses of modernization grant funds.

DESCRIPTION

Regulation Section 1859.79.2 provides that modernization funds may be used for those purposes outlined in Education Code (EC) Sections 17074.25 and 100420 (c). Additionally, SB 50 included a definition of "modernization" contained in EC Section 17070.10 (f). Complete Sections of the EC Code are included on the Attachment.

Nonetheless, some districts are proposing to use modernization funds for purposes not related to the actual facilities on a site. For example:

- To add additional area such as a gymnasium, multi- purpose room, kitchen or toilet area because those areas never existed or they were deemed inadequate by district standards.
- To demolish existing area and build replacement area with an augmentation of district funds.
- For site development items such as general site development items, amphitheater, off-site development or swimming pools.
- To enhance facilities on the site that are leased from others.

LEGAL COMMENTS

Under the SFP the term "modernization" is defined in Education Code Section 17070.10 (f) to mean "... any modification of a permanent structure...that will enhance the ability of the structure to achieve educational purposes." Further, Education Code Section 17074.25 of the Act states that "a modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of the school." Additionally, the analysis by the Legislative Analyst in the Supplemental Ballot Pamphlet for Proposition 1A indicated that "...At least \$2.1 billion for reconstruction or modernization of existing school buildings....".

In its emergency regulations, the SAB has not further defined the permissible uses of modernization funds, including whether the funds can be used for expansion of existing facilities or the construction of new area at the existing facility. Because a broad reading of these statutes may allow for modernization funds to be used for either of these purposes, it is counsel's recommendation that the SAB adopt a regulation that more clearly defines the permissible uses of these funds.

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STAFF COMMENTS

During public discussions for the development of the Emergency Regulations, no attempt was made to further define the terms included in those EC Codes. It was determined that decisions regarding the appropriate use of modernization funds should be made at the local level, as long as the modernization plan for use of the funds met the California Department of Education guidelines.

Due to the wide range of proposed uses of modernization grant funding, staff is concerned that some of these proposed uses may not be within the spirit and intent of the language in SB 50. Therefore, staff recommends that Regulation Section 1859.79.2 be amended to further define appropriate uses of modernization funding.

As requested by the SAB, the proposed amendment has been reviewed by the SAB Implementation Committee.

RECOMMENDATIONS

1. Adopt the proposed amendment to Regulation Section 1859.79.2 as follows:

Modernization grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420 (c). Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. In addition to modernization of the buildings described in Education Code Section 17070.15 (f), it can be used for:

- (a) the demolition and replacement of buildings that generated the modernization entitlement. The replacement area must be of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district. No additional new building area may be constructed, with the exception of area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) an addition to or separate construction associated with the buildings that generated the modernization entitlement, when that area is required by the federal ADA or DSA access requirements. Additional classrooms created by the modernization project will reduce the new construction eligibility for the district.
- (c) site development items as outlined in Regulation Section 1859.76. It can also be used for sidewalks, parking, turf and playground equipment.
- (d) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substances Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that does not exceed ten percent of the combined adjusted grant and the district matching share for the project.

Modernization grant funds may be used on any school facilities on the site. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

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RECOMMENDATIONS (Con't.)

2. Provided that as a condition of the Application for Funding, Form SAB 50-04, the district must certify that the proposed work in the Plans and Specifications for the modernization project are consistent with those uses outlined in amended Regulation Section 1859.79.2.
3. Direct staff to include this amendment in the final regulations when they are submitted to the Office of Administrative Law.

EXHIBIT A
ATTACHMENT

State Allocation Board Meeting, March 24, 1999

AMENDMENT TO SB 50 EMERGENCY REGULATIONS

Education Code Section. 17074.25

A modernization apportionment may be used for an improvement to extend the useful life of, or to enhance the physical environment of, the school. The improvement may only include the cost of design, engineering, testing, inspection, plan checking, construction management, demolition, construction, the replacement of portable classrooms, necessary utility costs, utility connection and other fees, the purchase and installation of air-conditioning equipment and insulation materials and related costs, furniture and equipment, including telecommunication equipment to increase school security, fire safety improvements, playground safety improvements, the identification, assessment, or abatement of hazardous asbestos, seismic safety improvements, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A modernization grant may not be used for costs associated with acquisition and development of real estate or for routine maintenance and repair.

Education Code Section 100420. (c)

Districts may use funds allocated pursuant to paragraph (2) of subdivision (a) and paragraph (2) of subdivision (b) for one or more of the following purposes in accordance with Chapter 12.5: (1) The purchase and installation of air-conditioning equipment and insulation materials, and related costs. (2) Construction projects or the purchase of furniture or equipment designed to increase school security or playground safety. (3) The identification, assessment, or abatement in school facilities of hazardous asbestos. (4) Project funding for high priority roof replacement projects. (5) Any other renovation or modernization of facilities pursuant to Chapter 12.5.

Education Code Section 17070.10 (f)

"Modernization" means any modification of a permanent structure that is at least 25 years old, or in the case of portable classrooms, that is at least 20 years old, that will enhance the ability of the structure to achieve educational purposes.

EXHIBIT B

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 24, 1999

AMENDMENT TO SB 50 EMERGENCY REGULATIONS

PURPOSE OF REPORT

To present a request from a Legislative member to amend the SB 50 Emergency Regulations regarding eligible cost for site development.

DESCRIPTION

Regulation Section 1859.76 provides an additional grant for certain off-site development costs on no more than two immediately adjacent sides of the school site. Costs for sidewalks are limited to those mandated on the sides of the streets adjacent to the site. Any costs for sidewalks that extend beyond the side of the school site are deemed improvements that are not part of the school construction project and therefore, paid by others.

Some districts are required by local ordinances to provide sidewalks that extend beyond the side of the school site as local planning commissions and governing authorities claim that these improvements are necessary as a result of increased student traffic to and from school.

LEGAL COMMENTS

Education Code Section 17072.12 authorizes the State Allocation Board (SAB) to provide assistance for site acquisition and development. However, the statute does not further define the extent or scope of permissible site development.

The SAB, pursuant to its authority to adopt regulations, may adopt a regulation to clarify and define the scope of the permitted site development costs.

STAFF COMMENTS

There are no clear classifications or guidelines that specifically identify when an off-site improvement cost benefits others. The SAB policy to limit improvements to no more than two sides of the site and to limit sidewalks to those mandated by local ordinances appears reasonable and has been used successfully for many years in previous state funded school facility programs. Enforcement of this policy has assured that state funds were never used for the benefit of others and, in many cases, districts have used this SAB policy to deter the local planning commission and governing authorities from exercising unreasonable demands for off-site improvements on the district.

A Legislative member has requested that the SAB allow sidewalk development to extend beyond the sides of the school site, if required by the city or county, and when the governing body of the city or county has made a finding that there is a reasonable relationship between the required sidewalk improvements and the pedestrian impact caused by the development of the school facility.

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As requested by the SAB, the proposed amendment has been reviewed by legal counsel and the appropriate legislative staff.

LEGISLATOR'S REQUEST

Amend Regulation 1859.76 (b) (2) as follows:

Sidewalks mandated by local ordinances. Sidewalk development may extend beyond the sides of the school site, if all the following are met: (a) If the new sidewalk development is requested by the city or county; (b) if the governing bodies of the city or county and the school district have made findings in public hearings that there is a reasonable relationship between the sidewalk improvement and the pedestrian impact caused by the development of the school facility; (c) if such development is found to be reasonable by the Board.