

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814
<http://www.opsc.dgs.ca.gov>



Date: July 23, 2009

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on **Thursday, August 6, 2009** from 9:30 a.m. to 3:30 p.m. in the California State Capitol, Room 126, Sacramento, California.

The Implementation Committee's proposed agenda is as follows:

- 1) Convene Meeting
- 2) Accessibility and Fire Code Requirements for Modernization Projects
Continue discussion regarding proposed regulatory amendments to the Accessibility and Fire Code grant allowance.
- 3) Improvements to School District Appeal Request Document/Process Improvements for Facility Hardship Requests
Discuss proposed improvements to school district appeal request document and proposed process improvements for Facility Hardship requests.

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Sue Genera at (916) 445-4320.

A handwritten signature in cursive script that reads "Susan Ronnback".

SUSAN RONNBACK, Chairperson
State Allocation Board Implementation Committee

Individuals who need auxiliary aids for effective participation are invited to make their requests and preferences known to Sue Genera at (916) 445-4320 five days prior to the meeting.

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE

Pending Items List
August 6, 2009

A. Future Items

- Career Technical Education Facilities Program Improvements
 - Financial Hardship Program
 - Joint-Use Program
 - Role of the Implementation Committee
 - Alternative Education Loading Standards and Funding
-

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

May 1, 2009

Legislative Office Building
Sacramento, CA

Members Present

Juan Mireles, SAB/OPSC (Interim Chair)

Masha Lutsuk, SAB/OPSC (Alternate for Lori Morgan)

Fred Yeager, CDE

William Savidge, CASH

Mamie Starr, CCESSA (Alternate for Kenn Young)

Lettie Boggs, CASBO (Alternate for Margie Brown)

Robert Pierce, SSD

Shawn Atlow, LAUSD (Alternate for Mark DeMan)

Dave Zian, DSA (Alternate for Richard Conrad; AM only)

Chris Ferguson, DOF

Dennis Dunston, CEFP

Gary Gibbs, CBIA

Members Absent

Cesar Diaz, SBCTC

Dean Tatsuno, AIA

Debra Pearson, SSSA

The meeting was called to order at 9:39 am.

Minutes

Minutes for the April 3, 2009 Implementation Committee (IMP) meeting were accepted as presented.

Opening Remarks

The Interim Chair announced that the process for the email distribution of IMP agenda items to committee members and interested parties will be different, beginning with item distribution for the June IMP meeting. In lieu of email attachments for the items, the email will provide a link to the OPSC website, where the items are posted.

The Interim Chair mentioned that an email was recently distributed to IMP members regarding the vacant Assistant Executive Officer to the State Allocation Board (SAB) position, and encouraged interested parties to apply for the position.

Appreciation was expressed that the items for this meeting were distributed to IMP members and interested parties one week prior to the meeting.

AB 127 Grant Adjustments – Analysis of Project Information Worksheet Data*Overview:*

OPSC staff member Josh Rosenstein presented an item to continue the discussion in determining the methodology for analyzing project data provided via the Project Information Worksheet (PIW).

Discussion Points

An inquiry was raised regarding the proposed criteria for excluding specific PIWs from analysis. It was suggested that rather than excluding PIWs with errors or missing information, that these issues be reconciled with the districts. In response, the OPSC stated that this may be possible

but that it will depend on the number of PIWs that will require this further research. Additionally, a concern was expressed regarding substituting data provided by the district with the SAB approved State apportionment information for PIWs with a slight variance between reported funds received and what appears on the approved funding item. The Interim Chair responded this could be possible, but had to be done quickly as to not delay the analysis process.

A committee member suggested excluding projects that had Financial Hardship status only at the design phase as these projects may have been designed down to fit within the Financial Hardship budget; keeping them in the analysis could skew the data. Another member countered that these projects could include potential elements in the design that would allow for either expansion or a phase two of the project. The Interim Chair responded that this would be considered, but that whether these projects were eliminated would depend largely on how many there were and how much the PIW pool would be depleted if they were excluded. It was offered that an option could be to include them in the analysis but keep them in a separate category.

In response to an inquiry regarding how many times a PIW must be submitted, OPSC staff responded that the PIW is required to be submitted a minimum of three times as part of the Governor's Executive Order for bond accountability. Comments were made that the PIW was required too many times within a short period of time and that for the purpose of grant adequacy, final data for complete projects would be the most accurate and useful. The Interim Chair responded that this would be taken into consideration.

An inquiry was raised regarding whether SDC projects could receive a waiver on submitting PIWs if these projects will likely be excluded from the PIW analysis. The Interim Chair responded that this would require further consideration.

Comments were made that projects with portable construction should be removed or kept separate from projects with permanent construction as these projects could skew the data. OPSC staff responded that the analysis could possibly be broken down by construction type and that results could be presented both combined and separate. The Interim Chair added that there is currently no authority to allow for different grant adjustments based on construction type, and to do so would require a legislative change. A committee member added that the majority of portable projects do not request the full number of pupil grants to correspond to State loading standards. Another member offered that projects that did not request the maximum grant amount could be adjusted and fully loaded for the purpose of analysis. OPSC staff responded that that was an option.

A committee member asked if the analysis was going to separate projects by project type. OPSC staff responded that the analysis needs to result in a recommendation regarding the K-6, 7-8, and 9-12 pupil grants. The OPSC stated that the analysis could be separated by project type, but it must be determined which project types will be analyzed to come up with a recommendation.

Concerns were expressed that the more adjustments are made to the data set, the harder it will be to get an accurate representation of the situation.

A committee member asked whether current PIWs had been reviewed to determine how many would pass all the criteria outlined in the item. OPSC staff responded that 200 PIWs had been reviewed using similar criteria and roughly 150 passed. In response, the committee member asked if the PIWs showed a geographic skew. OPSC staff responded that this has not yet been analyzed.

A committee member inquired about looking at projects by size. Another member added that costs are significantly less for projects that add classrooms to existing sites. OPSC staff

responded that addition projects were addressed at the previous committee meeting and were not included in this item.

A committee member inquired as to whether addition projects would be included in the analysis. OPSC staff responded that additions would be included in order to make a recommendation, but that the data could be broken down into subsets for discussion. The Interim Chair added that projects that under-report pupils could either be adjusted or excluded completely. OPSC staff commented that excluding projects that under-report pupils as a whole would remove a significant amount of the data, over thirty percent of the entire PIW pool. A committee member inquired as to why the number of such projects was so high. A concern was expressed that additions may be undertaken because districts cannot afford to build new schools.

A committee member expressed concern that some PIWs may contain artificial data due to districts prorating costs from linked projects. The member indicated that sometimes projects are bid together to take advantage of economies of scale, and that the PIW does not account for this. It was suggested that the PIW be revised to allow for combined project reporting. Staff responded that for PIWs which indicated that the project was bid together with another State funded project, the proposed protocol would call for the exclusion of these projects from the sample.

An audience member questioned the need for PIW submittals for combination projects in light of the fact that these PIWs may be excluded from the analysis, and mentioned that district have to pay additional fees to the architects to split project information for purposes of the PIW reporting. In response, the Interim Chair noted that project costs would be required to be split for audit purposes regardless of any PIW requirement. A committee member noted that audit reporting for combined projects can be done more easily than PIW reporting, as for audits the costs can be simply prorated where as the PIW requires the breakdown by type of costs.

An audience member inquired if it was the intent of the OPSC to make one recommendation for all of the grants or to make separate recommendations for each of the three K-12 grade categories. Staff indicated an expectation to make one recommendation for each of the three categories, but requested assistance in determining in which study multi-level category projects (such as K-8) should be included. A committee member inquired as to the number of these projects. Staff responded that the number is unknown, but that a decision should not automatically be made to exclude them in case the number is significant. Staff proposed three options for multi-level category projects:

1. Exclude these projects from study
2. Include these projects in the predominant category
3. Prorate funding and costs for these projects and include in both categories

A comment was made that the analysis should only focus on typical types of projects and projects with good data.

Audience and committee members expressed concerns about including site development costs in the comparison between State apportionment and project costs. Some stated that these costs should be included as it would be too difficult to separate these costs from the total construction costs. Others argued that site development was one of the biggest variables, and would skew the results if not excluded. An inquiry was made as to why current regulations do not cover all site development costs that are required in a project. The Interim Chair responded that site development costs are not part of the issue regarding the pupil grant increase. OPSC staff pointed out that the PIW can be a useful tool, and that with an improved data collection process, the PIW could possibly be used to make better determinations with regards to site development funding in the future.

Comments were made regarding the method that should be used to compare the data. OPSC staff presented the option of using a bell curve. A committee member expressed the concern that the data analysis would probably not result in a normal distribution. OPSC staff responded that the small sample that had already been reviewed had produced a somewhat normal distribution, but it would not be possible to determine the exact model that would work best until all the data was reviewed. An audience member suggested the use of a scatter plot diagram to show projects with respect to magnitude of building and level of funding.

An audience member inquired as to how the different project dates would be represented on the bell curve. OPSC staff responded that there would be individual curves for K-6, 7-8, and 9-12 projects since a separate recommendation would be given for each category.

An inquiry was made as to how the analysis would account for changes in the bidding climate. OPSC staff responded that an option could be to add a time series to this analysis.

A suggestion was made to use a cost per square foot methodology. This prompted concerns that there were too many variances between projects and it would be difficult to establish standards for this method to be possible. Additionally, it was questioned how the results would be translated back into per-pupil grant data. The Interim Chair responded that this was a possible option, but would not necessarily be the one chosen, or the only one used.

An inquiry was made regarding the possibility that certain districts be exempted from the PIW once it has been determined which projects will be excluded from the study. The OPSC responded that that could be discussed.

Next Steps:

OPSC staff will attempt to develop a more fine-tuned methodology, taking into account the suggestions made at this meeting. Discussion will continue at the next IMP meeting.

60 Percent Commensurate and 150 Percent Regulations

Overview:

OPSC staff members Josh Damoth and Tim Hegedus presented an item to review the 150 Percent rule and 60 Percent Commensurate requirement. The discussion included a brief history of Senate Bill (SB) 50 (Chapter 407, Statutes of 1998 – Greene) and Assembly Bill (AB) 695 (Chapter 858, Statutes of 1999 – Mazzone), which stipulated how a school district's eligibility is to be created and maintained.

Discussion Points:

Staff and audience members discussed the OPSC's current practice of adjusting a school district's eligibility pursuant to the 150 percent regulation at the time of apportionment rather than at the time of audit, as was the practice prior to 2007. Staff explained that doing the adjustment at the time of apportionment ensures that districts are aware of their new construction eligibility so that projects can be planned accordingly. If the adjustment is not made until the time of audit, a district's baseline may reflect the appearance of excess eligibility for up to seven years after funding. This could lead a district to plan or receive funding when it does not actually have adequate eligibility.

Concerns were raised about specific language in SFP Regulation section 1859.51(i)(7) regarding when the 150 Percent rule is to be applied. Some committee and audience members expressed that the language is confusing and illogical, and some expressed that the regulation may be misaligned with Education Code (EC) Section 17071.75(b). One audience member suggested that SB 50 and AB 695 allow districts to build classroom capacity beyond the pupil grant request. Staff noted that AB 695, enacted after SB 50, requires that a school district's

eligibility baseline must be reduced, based on the State loading standards, for all State and locally funded classrooms that are added to a school district's inventory.

Staff noted that the 150 Percent rule provides greater flexibility than Statute provides. Staff also clarified that after the State Allocation Board (SAB) approved the regulation, it was amended as a result of a public comment made and the resulting regulation was difficult to interpret. Audience and Committee members suggested that clean-up regulations could be an option to make application of the 150 Percent rule clear. Staff suggested that revisions may be necessary and suggested aligning the SFP regulations with the provisions of EC Section 17071.75(b).

Audience and Committee members discussed the 60 Percent Commensurate requirement, expressing concern that it prevents school districts from retaining savings from State funded projects. It was suggested that allowing districts to receive excess funding and retain savings would allow districts to use the savings for other school construction projects, such as the addition of non-classroom facilities to existing sites that need them. Staff stated that the 60 Percent Commensurate requirement was approved by the SAB specifically out of concern for excessive savings, and the requirement allows for up to 40 percent of project costs to be soft costs, based on the cost estimate prepared by the Architect of Record at the time the funding application is submitted.

An audience member inquired whether a district that had met the 60 Percent Commensurate requirement at the time of apportionment would be penalized at the time of audit if the bid climate changed creating actual costs which were considerably less than the estimated costs. One audience member suggested that Financial Hardship districts should be able to keep savings in cases where bid climates become more favorable after funding. Staff responded by stating that keeping savings are not allowed for Financial Hardship districts, and that the OPSC is aware of the importance of ensuring that districts who meet the 60 Percent requirement at the time of application processing are not penalized unjustly at the time of audit. Staff also noted that the OPSC auditors take into account the actual percentage of construction costs of a project compared to the estimate as a potential indicator of audit issues.

Concerns were raised about the interaction and perceived conflict between the 60 Percent requirement and the 150 Percent rule. A Committee member stated that in the cases of low cost projects, districts are forced to reduce the pupil grants and/or supplemental grants requested to meet the 60 Percent requirement, and the reduced pupil grant request triggers an adjustment to the district's baseline eligibility if the pupil capacity of the project is greater than 150 percent of the pupil grant request. Audience members requested that this issue be included in a continued discussion at a future Committee meeting. Staff agreed to bring a continued discussion item back to a future Committee meeting.

Next Steps:

An item for continued discussion on this topic will be presented at the next Implementation Committee meeting.

Facility Inspection Tool

Overview:

OPSC staff member Jon Hicks presented the proposed revisions and amendments to the Facility Inspection Tool (FIT).

Staff explained that the scoring system used on the FIT had a positive bias, and proposed that it be revised to more accurately reflect school conditions noted by inspectors.

Discussion Points:

A Committee member stated that the original FIT and the current proposed revisions resulted from a collaborative process by a workgroup involving several county offices of education, the American Civil Liberties Union, and the OPSC, who have been working together since the first days of the Williams Settlement.

A Committee member inquired whether the workgroup supported the proposed revisions. An audience member who was part of the workgroup stated that these revisions were recommended after extensive research by the workgroup and contributions from some of the largest counties, and that the revisions were essentially a recalibration to the FIT that would not require any retraining of inspectors. A Committee member stated that the workgroup was very cautious of negative ratings during the implementation of the original FIT, and that this inadvertently led to a positive bias in the scoring system.

An audience member asked if emergency regulations were needed to get these revisions implemented more quickly. A Committee member stated that these revisions are not part of the regulatory process, since the FIT is simply a template provided by the OSPC. It was noted that while districts must inspect the components listed on the FIT, they are not required to use this exact template.

A Committee member complimented the process by which these revisions were implemented, specifically the transparency of the process and the inclusion of stakeholders in the process. An audience member stated that a more realistic representation of facility conditions can be beneficial for improvements because positive bias can be detrimental to receiving funding in the future, and more accurately reporting school conditions will help to improve communication of what needs schools have.

Next Steps:

This item will be presented at the next SAB meeting.

Adjournment and Next Meeting

The meeting adjourned at 3:14 p.m. The next IMP meeting is scheduled for Friday, June 5, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.



IMPLEMENTATION COMMITTEE MINUTES

June 5, 2009

Legislative Office Building
Sacramento, CA

Members Present

Susan Ronnback, SAB (Chair)

Juan Mireles, OPSC/SAB

Masha Lutsuk, OPSC/SAB

Fred Yeager, CDE

William Savidge, CASH

Mamie Starr, CCESSA (Alternate for Kenn Young)

Margie Brown, CASBO

Robert Pierce, SSD

Mark DeMan, LAUSD

Richard Conrad, DSA

Chris Ferguson, DOF (AM only)

Lettie Boggs, CEFP (Alternate for Dennis Dunston)

Gary Gibbs, CBIA

Dean Tatsuno, AIA

Members Absent

Cesar Diaz, SBCTC

Debra Pearson, SEDA

The meeting was called to order at 9:41 am.

Minutes

An audience member asked that a minor change be made to the minutes for the May 1, 2009 Implementation Committee (IMP) meeting.

Opening Remarks

Ms. Susan Ronnback introduced herself as Interim Assistant Executive Officer (AEO) of the State Allocation Board (SAB), and announced that the deadline for applications for the permanent AEO position is June 12, 2009.

The Chair announced that the newly formed SAB Rules and Regulations Subcommittee will establish some ground rules regarding the Implementation Committee, and stated that the Rules and Regulations Subcommittee is open to input on this topic. The Chair also proposed that an issue tracking document, to include a summary of the issues raised during discussion of an item be added to the analysis of each item. In addition, the Chair requested that for each item, a target date for presentation before the SAB be included in the analysis. In response to an inquiry, the Chair remarked that work on the Audits Subcommittee will begin in the near future.

AB 127 Grant Adjustments – Analysis of Project Information Worksheet Data

Overview:

OPSC staff member Josh Rosenstein presented an item on the methodology for analyzing project data provided via the Project Information Worksheet (PIW).

Discussion Points:

Concern was expressed by the Chair that there has not yet been a recommendation presented to the SAB regarding the grant adjustment methodology. The Chair suggested that an Information Item be added to the June 24th SAB Agenda to update the Board on the IMP discussions to date and to solicit Board direction on how they would like staff to proceed in

developing a methodology for determining the required AB 127 adjustment to the per pupil grants. A committee member responded that it was important to allow the time for input on the methodology in order to ensure the quality of the data.

A committee member inquired as to why PIWs with State contribution reported in error would be excluded, as outlined in the item. It was suggested that these errors be corrected instead. The OPSC responded that these would be excluded because the errors often indicated data was being reported for a different project. It was pointed out that a percentage of error would be allowed to account for adjustments due to increases by the Board and other allowable reasons that could cause districts to report slightly different amounts.

Concern was expressed by a committee member that there would not be enough data to work with if too many PIWs were excluded due to errors. It was suggested that districts be contacted to correct any identified errors. Additionally, contacting the districts and letting them know what errors were made would help them better understand how to complete the PIW in the future. OPSC staff responded that an attempt was made to contact a sample of districts without much success. It was determined that it would take a substantial amount of time for districts to research the issues and respond to the OPSC; therefore, in order to streamline the process, Staff would not contact districts during this particular analysis. Staff informed the attendees that for the future, a triage system was being developed and additional on-line instructions had been implemented to address these issues. Staff also indicated an expectation that information will be more accurate in the future as districts become more familiar with completing the PIW.

An inquiry was made by a committee member as to where savings should be reported on the PIW, with regards to savings from a different project that were being applied to the current project. Several other audience members expressed that this was a common issue with the PIW. OPSC Staff responded that savings applied to a project should be reported as the district match on the PIW.

A concern was expressed by an audience member that information was requested on the PIW that either the OPSC already had access to, or that was not necessary in determining how construction costs have changed. Additionally, a comment was made that much of this information was not going to be used in the actual analysis presented in the item. There was a concern from the audience that districts needed to know why the information was being requested. OPSC Staff responded that the additional information is necessary because it could provide possible answers as to why some projects were over or under-funded. With regards to the information the OPSC had access to, this is useful because it acts as a form of checks to ensure the districts reported information for the correct project.

Comments were made that the data provided on the PIW would be more accurate as the project got closer to completion. There were several comments from audience and committee members that the PIW was required to be submitted too frequently and should only be submitted when the project is 95 to 100 percent complete. It was argued that this would resolve many of the current issues with the PIW as data provided would be actual data versus estimates, and districts would take the time to ensure the form was completed correctly. The OPSC noted a benefit in using estimates as these PIWs represent newer projects rather than projects that were bid some time ago. A comment was made that the PIW data for projects that are 95 to 100 percent complete is often more accurate because it is actual data, however, it is historical and can often represent a four year lag period. It was suggested that it would be better to use a Lee Saylor type of report versus the PIW. The OPSC responded that Staff is proposing to look at the information provided over a period of time in order to depict any trends. More recent data could be weighed differently than older data.

An inquiry was made by an audience member as to whether Financial Hardship projects that were not going to be included in the analysis would still have to follow the PIW submittal

guidelines. The OPSC responded that current regulations [Regulation Section 1859.71 and PIW Instructions] require the submittal at three different times, but that in the future this may be an area for possible regulatory change.

An audience member inquired as to whether the analysis was going to be transparent. The OPSC responded in the affirmative, stating that a summary would be provided, and any additional information would be made available upon request.

There was a discussion regarding the use of PIW information for bond accountability, the Governor's Executive Order, EO S-02-07, and the interpretation of bond accountability requirements. It was suggested that the Order had referred to State agencies being accountable for the quality of infrastructure and that OPSC had taken on a different interpretation. It was suggested that the OPSC be audited, rather than the districts. Additionally, several attendees questioned the role of the PIW. The OPSC responded that the PIW was approved by the Board and that bond accountability was part of the discussion when it was adopted.

An audience member suggested that different criteria be used for analysis since the recommendation for the grant adjustment amount was already six months overdue. The consideration of a recent report prepared by UC Berkeley was suggested.

It was suggested that if Special Day Class (SDC) and certain Financial Hardship projects' PIWs will be excluded from the analysis, districts should not have to submit PIWs for them. OPSC Staff responded that the exclusion of the Financial Hardship projects was requested by the attendees of past IMP Committee meetings and that the SDC projects were excluded because the Board does not have the authority to make an adjustment to the SDC grants; only those for K-12. Staff offered that these projects could still be analyzed for informational purposes. The OPSC requested that the discussion regarding the submittal requirements for these projects be brought up in a separate discussion about the PIW itself and not the methodology, as current regulations require that the PIW be submitted for these projects.

A committee member commented that the development process of the PIW was not collaborative and that the objections and concerns expressed by many stakeholders were ignored during its creation. It was requested that a workgroup be put together to work on the PIW revisions. The OPSC responded that a workgroup could be an option in the future.

Inquiries were made as to whether the OPSC could be ready to make a recommendation to the Board now for 2009 grant adjustments. OPSC Staff responded that this depended on the progress of the discussions for the proposed methodology.

An audience member suggested that the PIW is a flawed document that should be abandoned entirely and replaced with a different process; the audience member referenced the UC Berkeley study as a potential resource. The OPSC responded that the PIW does have value in the information it provides. The OPSC added that starting over would add additional time to the process, and having someone else perform the study could take away from the collaborative process.

Comments were made concerning whether requiring the PIW can be considered a mandate or is a condition of receiving bond funds.

An audience member suggested using a standard deviation methodology to determine a mean cost per square foot. This would account for differences in project types and costs. This could be computed yearly to determine a percentage change in costs year to year. The Board could then compare this percentage change to the Construction Cost Index increase to determine if an additional increase should be given. Additionally, this could be used to study the adequacy

of the grants by comparing the dollar per square foot to the pupils to come up with an adequate per pupil grant amount. This would require construction cost and square footage information for the project and would be easier than requesting all the information on the PIW. OPSC Staff responded that the additional information on the PIW is necessary to answer questions as to why some projects were over or under-funded, but added that they were proposing to use both a square footage and bell curve method in the analysis.

An audience member asked for clarification as to whether existing facilities should be included in the data requested on the PIW in the section regarding outdoor facilities. It was suggested that the current instructions are confusing and do not clarify what is wanted. OPSC Staff responded that the data provided should only apply to facilities that are included in the current project and that this had been clarified in the additional on-line instructions. The audience member suggested that Staff take into account that this section could have substantial errors when analyzing the data. The OPSC responded that Staff would check for errors in this section.

Concern was expressed by a committee member that including Financial Hardship projects that were only Financial Hardship at the Design phase could skew the analysis as these projects are often scaled down at the design phase with savings applied to a second phase or addition project. OPSC Staff stated that these projects could be analyzed separately if they represent a large enough sample size.

An audience member inquired as to what Staff planned to do if the analysis did not result in a normal distribution, with regards to the bell curve methodology. The OPSC responded that there currently was not an alternate plan, but that it would still be important to show the distribution so that the Board members could see the big picture to help them make their decision.

Concern was expressed about including projects that under-requested pupil grants in the analysis as the dollar per square foot data for these projects could skew the data. It was argued that under-requested projects often consisted of portable classrooms versus permanent. Several comments were made that the grant was not intended to build portable classrooms and that districts were often forced to build portables because of the inadequacy of the grant; including them in the study would perpetuate this inadequacy. OPSC Staff responded that there were several reasons a district may under-request pupil grants (such as insufficient new construction eligibility) and it would not be possible to make a general statement. Additionally, an inventory of the projects could be given to the Board showing how many portable projects were in the analysis. The challenge was that there was only one grant to fund all types of projects; therefore, the analysis had to be representative of the projects it funded.

An audience member suggested taking model schools, as identified by CDE, which represent quality and efficiency and see how much it costs to build those schools.

The Chair summarized the main issues raised during the discussion and inquired as to what the committee wanted presented to the Board. A committee member suggested that the information from the PIW be presented to the Board along with other methods for determining the adjustment. Additionally, it was stated by an audience member that a full disclosure of the strengths and weaknesses of the PIW should be provided. The OPSC responded that in order to conduct the analysis, the methodology needs to be finalized so that a solid recommendation can be presented to the Board.

A committee member requested that projects on each side of the bell curve distribution as well as in the middle be analyzed. OPSC Staff responded that this was included in the proposal. Additionally, this was part of the study that required the additional project information requested on the PIW.

An inquiry was made about the use of a scattergram, as mentioned at a previous meeting. OPSC Staff replied that this concept was taken into consideration but was found to be too difficult as it is not possible to analyze more than two factors at a time. Instead, it was proposed to show the results as a whole and then break out highlights of subgroups as supplements.

Next Steps:

An informational item on this topic will be presented at the June SAB meeting, and an item may be presented at the July IMP meeting, depending on the guidance from the Board.

60 Percent Commensurate and 150 Percent Regulations

Overview:

OPSC staff members Josh Damoth and Tim Hegedus presented an item to review the 150 Percent rule and 60 Percent Commensurate requirement. The Chair summarized her understanding of the key points from the previous Committee meeting and then opened the item up for discussion.

Discussion Points:

Audience and Committee members discussed the OPSC's change in the practice of adjusting a school district's eligibility pursuant to the 150 Percent regulation at the time of audit, to making the adjustment at the time of apportionment, beginning in 2007. One concern was that the OPSC did not properly inform school districts of the procedural change. Staff stated that the OPSC does have mechanisms in place for announcing changes, but acknowledged that this change could have been communicated more effectively.

An audience member also expressed concern that this procedural change was a violation of Administrative Procedure Act requirements, and that the issue should have been brought before the SAB. The OPSC responded that the issue was discussed when an appeal related to the 150 Percent rule was heard by the SAB last year. Staff also stated that, at that time, the Board agreed with the OPSC's interpretation and application of the 150 Percent rule.

An audience member stated that the 60 Percent Commensurate requirement, which mainly affects districts with portable classroom addition projects, is problematic since these lower-cost projects do not require as much funding and therefore require a reduction to the pupil grant request. A concern was expressed that, rather than reducing the pupil grants requested to meet the 60 Percent Commensurate requirement, districts may add unneeded work to projects to ensure maximum funding.

An audience member expressed the opinion that the OPSC's interpretation of the 150 Percent regulation language is problematic and overly conservative, and that Education Code language is intended to be interpreted liberally. Another audience member raised concern that the regulations as approved by the Office of Administrative Law are more stringent than what was approved by the SAB. There was discussion regarding whether the current regulation language is clear. OPSC Staff stated that, considering the variety of interpretations, the regulations should be revised for clarity.

An audience member stated that the OPSC's change in procedure to make adjustments at the time of funding is also a concern because it disregards part of Regulation Section 1859.51(i)(7) by not taking into account whether the district has funded a portion of the project beyond its required contribution.

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It was suggested by some audience members that School Facility Program (SFP) Regulation section 1859.51(i)(7) ought to remain unchanged, but should be interpreted in such a way that adjustments pursuant to section (i) apply only to locally-funded projects. It was further

suggested that adjustments pursuant to the 150 Percent rule only apply to SFP projects when a district spends more than its matching share.

Next Steps:

An item for continued discussion on this topic will be presented at the next Implementation Committee meeting.

Adjournment and Next Meeting

The meeting adjourned at 3:41 p.m. The next IMP meeting is scheduled for Friday, July 10, 2009 at 9:30 a.m. and will be held at the Legislative Office Building located at 1020 N Street, Room 100, Sacramento, California.

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814

**IMPLEMENTATION COMMITTEE MINUTES**

July 16, 2009

California State Capitol
Sacramento, CA

Members Present

Susan Ronnback, SAB (Chair)	Robert Pierce, SSD
Juan Mireles, OPSC/SAB	Mark DeMan, LAUSD
Masha Lutsuk, OPSC/SAB (PM only)	Chris Ferguson, DOF
Michael O'Neill, CDE (Alternate for Fred Yeager)	Dennis Dunston, CEFP
Tom Duffy, CASH (Alternate for William Savidge)	Gary Gibbs, CBIA (PM only)
Mamie Starr, CCESSA (Alternate for Kenn Young)	Debra Pearson, SSDA
Margie Brown, CASBO	

Members Absent

Cesar Diaz, SBCTC
Richard Conrad, DSA
Dean Tatsuno, AIA

The meeting was called to order at 9:43 am.

Minutes

Minutes for the June 5, 2009 Implementation Committee (IMP) meeting were accepted as presented.

Opening Remarks

The Chair announced that, beginning in August, IMP meetings will be webcast for the convenience of those who may be unable to travel to attend the meeting. It was stated that a dedicated e-mail address will be provided so that questions or comments may be submitted.

The Chair announced that the first meeting of the State Allocation Board (SAB) Audits Subcommittee will be held on August 11, 2009 from 9:30 a.m. until 12:00 p.m. in the California State Capitol. The first meeting of the SAB Rules and Regulations Subcommittee has yet to be scheduled.

A Committee Member requested an update regarding the methodology for analysis of Project Information Worksheet data. The Office of Public School Construction (OPSC) responded that an item to update the SAB on the progress of the analysis will be presented at the July 22, 2009 SAB meeting, and that the target date for presentation of the completed analysis is the August 26, 2009 SAB meeting. An inquiry was raised regarding whether or not the methodology will be presented to the IMP members and stakeholders prior to the completion of the item that will be presented to the SAB. The OPSC noted that the same methodology that was previously presented at the June 6, 2009 IMP meeting will be utilized.

60 Percent Commensurate and 150 Percent Regulations*Overview:*

OPSC staff members Tim Hegedus and Masha Lutsuk presented an item to review the 60 Percent Commensurate and 150 Percent Regulations. Tim Hegedus summarized key points from the previous Committee meeting and then opened the item up for discussion.

Discussion Points:

A Committee member expressed agreement with the Coalition for Adequate School Housing's (CASH) letter stating that Senate Bill (SB) 50 overlooked the issue of the inability of the State to capture facilities built entirely with local funds. Therefore, SB 50 did not provide a mechanism for the OPSC to capture this capacity and school districts with local funds could build entire schools with those funds and retain their eligibility for those same students.

Audience and committee members shared a concern that the OPSC was penalizing school districts twice, once at the time of funding with the 60 percent commensurate requirement and then again at the time of audit. They stated that the 150 percent rule encourages districts to add to the scope of their project so they will not have to take the 150 percent hit, thus costing the state more money. They further stated this rule is a disincentive to build efficiently because districts are penalized when asking for fewer grants than the maximum for the capacity of the project. Several committee and audience members suggested changing the rules wherein districts simply take a hit for every classroom (25 pupils for K-6 grade levels and 27 pupils for 7-12 grade levels) but not forcing the 60 percent commensurate rule and then this entire issue would no longer exist. Another committee member suggested allowing districts to request fewer grants than the maximum for the capacity of the project without penalizing the district by applying the 150 percent rule.

OPSC expressed concerns that Regulation section 1859.51(i)(7) is not aligned with the statute. The statute provides a one-for-one reduction of eligibility for each pupil housed in a new construction project.

An audience member expressed concern that the OPSC's change in procedure regarding adjustments pursuant to the 150 percent rule was a violation of Administrative Procedure Act requirements, and that the issue should have been brought before the SAB.

An audience member stated that the OPSC's change in procedure to make adjustments at the time of funding is also a concern because it disregards part of Regulation Section 1859.51(i)(7) by not taking into account whether the district has funded a portion of the project beyond its required contribution.

A Committee member stated that the 60 percent commensurate rule is arbitrary and that the OPSC should relax the rule to allow districts flexibility to build core facilities. It was further stated that the OPSC should average out the costs from project to project. An example was provided where a district designed a project two years ago when construction costs were much higher than today's costs, and the district was forced to redesign the project in order to meet the 60 percent commensurate test.

The Department of Finance expressed support for the 60 percent commensurate rule as currently in regulation. An audience member noted that it is critical to address the 60 percent commensurate requirement at the same time as considering the OPSC's Option One for amendments to Regulation Section 1859.51(a).

The Department of Finance stated that under Option One, Regulation 1859.51 (a) and (i) may be duplicative.

CASH prepared a letter with option and language close to that presented by staff in Option three. CASH and one committee member voiced their preference for Option Three. Another committee member expressed preference for Option One with the stipulation that the 60 percent commensurate rule would not apply.

OPSC staff expressed concerns about the difficulty with the implementation of Option Three. One main concern with Option Three is that if the District spends \$1 over its required 50 percent match, this triggers an eligibility adjustment. Further, this would require an extensive audit be conducted by staff and would also require revising form SAB 50-06 to incorporate a section for the district to report its expenditures in order for OPSC to determine if the district spent beyond the State plus district matching share.

Implementation Committee and audience members expressed concerns that there is no separate funding for Minimum Essential Facilities (MEF's) thus there is a need for them to preserve eligibility in order to fund MEF's.

Audience and Committee members stated that the grants are excessive for addition projects and are insufficient to build MEF's. They also believe there is not enough funding for New School Grants.

A Committee member suggested a Fourth Option, which would allow districts to request only the grants they need for a project, and for OPSC to keep the 60 percent commensurate rule and eliminate the 150 percent rule.

Next Steps:

An item on this subject will be presented for consideration at a future SAB meeting.

Accessibility and Fire Code Requirements for Modernization Projects

Overview:

OPSC staff members Matt Nakao and Brigitte Baul presented an item regarding Accessibility and Fire Code Requirements for Modernization Projects. OPSC staff provided an overview of events that have occurred regarding the discussion of the Accessibility and Fire Code Requirements on Modernization Projects. The item was opened for discussion.

Discussion Points:

A comment was made that the two options presented by Staff for the Accessibility and Fire Code Requirements regulations were reasonable, but that the report the OPSC presented to the SAB in August 2008 concluded that districts tended to choose the 60 percent option over the three percent option and therefore, a choice between the two options would point toward adoption of the 60 percent option. The Chair suggested that making no changes to the regulation, i.e. preserving district choice between the 60 percent and three percent options, could be discussed in the SAB item. However, she stated that the proposed regulation change was directed by the SAB after the Board accepted the Staff report to eliminate the 60 percent option.

The OPSC explained the meaning of "replacement of like kind," and continued to explain the two proposed regulation options. Option one refers to keeping the 60 percent and removing the three percent option. The three percent option would only be applicable to replacement of like projects. Option two is to discontinue the three percent option entirely.

Clarification was requested regarding the OPSC's study of districts that chose the three percent and 60 percent options. The OPSC responded that the data reflected that most districts choose the 60 percent option and that the data covered projects funded from August 2007 to December 2008.

A comment was made that districts should be allowed to do the calculation and choose which option provides the maximum amount of funding.

The OPSC explained that, in the past, while the three percent modernization grant increase was provided to all projects, a study of projects by the Division of State Architect revealed that districts were spending various portions of modernization grants on accessibility and fire code upgrades. This prompted the SAB to direct staff to find a better method for accurately funding such costs. The SAB then adopted, on a trial basis, an additional method, known as the 60 percent funding, to address accessibility and fire code requirements. As directed by the Board, Staff analyzed how districts were utilizing the grants and found that the majority of projects were funded using the 60 percent grant. Thus, Staff recommended that the Board eliminate the three percent funding option, per the Board's previous direction to Staff to select a single method of funding.

An inquiry was raised regarding whether districts are required to submit a cost estimate and checklist(s) under the three percent option. OPSC staff explained that the checklist(s) are required for projects seeking either the three percent or the 60 percent options.

An additional question was asked regarding whether the checklist(s) include(s) the architect's fee estimate. The OPSC replied that the checklist(s) is (are) the estimate.

A comment was made that before the proposed regulation change came out, there wasn't a problem if there was no additional work in the project specifically for accessibility and fire code requirements. With the regulation change, even projects seeking the three percent grant are still required to have a checklist for these construction items, which results in additional cost for the school district. Architects typically do not provide a detailed cost estimate as part of the work because it engenders additional costs to do so.

An inquiry was raised regarding the purpose of eliminating the three percent option for districts. The OPSC responded that, at the August 2008 SAB meeting, the SAB directed the OPSC to present an analysis to determine which was the most viable option.

It was suggested that the SAB item should reference that stakeholders would like flexibility and that there is no need to make any changes to the Accessibility and Fire Code Requirements regulation.

A comment was made that when the 60 percent option was introduced, the three percent option was for small school districts with modernization projects that were between \$150,000 and \$200,000. It was mentioned that the fees required to provide the estimate of work would cost the same as the three percent grant allowance. Having the three percent option allowed small school districts to avoid the cost estimate and thereby the extra expense.

A comment was made to erase the first bullet in Option Two. Another comment was made that accessibility requirements, which are not part of the building and represent an additional cost, may be necessary when a classroom is replaced. In this case, there is a substantial amount of additional work that would not be included. The OPSC commented that it was thought that most of the upgrades were embedded in the building design.

A comment was made that based on the November 2008 data, the OPSC should examine more current projects that received unfunded approvals. The OPSC agreed to take this into consideration.

A comment was made that the SAB that approved the regulations is a different Board now, and the OPSC should educate the new Board about projects and accessibility and fire code requirements.

An audience member commented that a district site was reviewed for the Seismic Program and did not meet the requirements, but the site was deemed unsafe. The district needs to do

replacement area of like kind for the entire school site. The member inquired if the district can use the 60 percent option for costs of bringing the buildings up to code. The OPSC agreed to take this into consideration.

A question was asked regarding whether the 60 percent option includes soft and hard costs, and an opinion was expressed that it should. An inquiry was raised regarding whether it is possible to consider including soft cost in the 60 percent option.

There was concern that the SAB did not receive enough information before accepting the OPSC report and directing Staff to draft regulations to eliminate the three percent option. Input was made on the proposed regulations under Attachment A, (A) to add "soft" and eliminate (B) (3).

The OPSC staff stated concern that the three percent option is not based on actual need, and that it may contribute to over funding projects, which shortens the lifespan of the available bond funds. Furthermore, with time, there may be less need for accessibility and fire code upgrades, since the newer facilities that will be eligible for modernization will already contain many of the necessary upgrades. This will conceivably increase an unnecessary dependency on the three percent option funds.

Next Steps:

An item for continued discussion on this topic will be presented at the next Implementation Committee meeting.

Adjournment and Next Meeting

The meeting adjourned at 3:19 p.m. The next IMP meeting is scheduled for Thursday, August 6, 2009 at 9:30 a.m. and will be held at the California State Capitol, Room 126, Sacramento, California. The August 6, 2009 meeting will be webcast.

**STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
August 6, 2009**

ACCESSIBILITY AND FIRE CODE REQUIREMENTS ON MODERNIZATION PROJECTS

PURPOSE

To discuss proposed amendments to the School Facility Program (SFP) regulations for accessibility and fire code requirements under the Excessive Cost Hardship Grant.

BACKGROUND

Date/ Meeting	Overview of Report	Outcome
August 2006 SAB	<ul style="list-style-type: none"> • OPSC staff presented to the SAB amendments to the SFP Section 1859.83(f) to allow school districts the option to choose an allowance based on three percent of the base grant or 60 percent of the minimum work necessary to meet accessibility and fire code requirements. • The report included the methodology and calculations for how the 60 percent option was determined and how the maximum grant cap under the 60 percent option was determined. • OPSC staff recommended SAB approve the regulation amendments. 	<p>The SAB approved OPSC staff recommendations to allow school districts the option to choose an allowance based on three percent of the base grant or 60 percent of the minimum work necessary to meet accessibility and fire code requirements on a trial basis for one year with a goal to determine the best way to provide funding for costs of accessibility and fire code requirements compliance.</p>
Aug. 2008 SAB	<ul style="list-style-type: none"> • OPSC staff reported to the SAB the results of a data analysis based on the amendments to the SFP regulations. • The report included one full year of data from projects that generally received an allowance for accessibility and fire code requirements from August 2007 to July 2008. • A substantial amount of districts chose the 60 percent option over the three percent option. Districts that took advantage of the 60 percent option received a significant increase in funding over the three percent option. 	<p>The SAB accepted the report from OPSC staff and requested staff to draft amended regulations to remove the three percent option for the accessibility and fire code requirements under the Excessive Cost Hardship Grant and to keep the 60 percent option.</p>

Date/ Meeting	Overview of Report	Outcome
Nov. 2008 IMP	<ul style="list-style-type: none"> • OPSC staff proposed draft regulations for the accessibility and fire code requirements under the Excessive Cost Hardship Grant to replace the three percent option with the 60 percent option. • OPSC staff presented to the IMP Committee background information and data on modernization projects that received an allowance for accessibility and fire code requirements from August 2007 to July 2008. 	<ul style="list-style-type: none"> • The IMP Committee requested OPSC staff to gather additional data to present at the December 2008 IMP meeting. • The IMP Committee requested additional data analysis to look at projects that involve replacement area of like kind.
Dec. 2008 IMP	No report on this issue was presented.	The IMP Committee Chair announced that OPSC staff intended to return to the IMP Committee in approximately six months with additional data.
July 2009 IMP	<ul style="list-style-type: none"> • Office of Public School Construction (OPSC) staff presented two proposed options for accessibility and fire code requirements under the Excessive Cost Hardship Grant. These options were based on the August 2008 State Allocation Board's (SAB) direction to draft regulations to eliminate the three percent option, as well as seek input on the draft regulations from the Implementation (IMP) Committee. • The report included 16 months of data from apportioned projects that received an allowance for accessibility and fire code requirements from August 2007 to December 2008. 	OPSC staff will amend the item to incorporate input from the IMP Committee and return the item to the August IMP Committee meeting for final review prior to the August 2009 SAB meeting.

AUTHORITY

SFP Regulation Section 1859.79.2(a) states that Modernization Grant Funds may not be used for new building area. However, it can be used for replacing building area of like kind based on square footage and building area required by the federal Americans with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.

SFP Regulation Section 1859.83(f)(1) currently allows for a Modernization Excessive Cost Hardship Grant for accessibility and fire code requirements. Districts have the option of selecting either three percent of the modernization base grant or 60 percent of the DSA verified hard construction costs of the minimum work necessary for accessibility and fire code requirements.

For projects constructed pursuant to SFP Regulation Section 1859.79.2(a) (replacement building area of like kind), SFP Regulation Section 1859.83(f)(2) allows for a Modernization Excessive Cost Hardship grant for accessibility and fire code requirements equal to three percent of the Modernization Grant.

STAFF COMMENTS

At the August 2008 SAB meeting, after reviewing the data presented in the staff report, the SAB directed the OPSC to provide proposed amendments to SFP Regulation 1859.83(f) to discontinue the three percent funding option for the accessibility and fire code grant allowance.

Based on feedback from the November 2008 and July 2009 IMP meetings, where stakeholders expressed concern for projects that consist of replacement building area of like kind construction, the OPSC drafted proposed amendments to SFP Regulation Section 1859.83(f). These amendments would allow districts the opportunity to receive a three percent increase to the base grant if there is replacement building area of like kind only in their projects. For projects that include both replacement building area of like kind and any other modernization work, districts would be able to choose either the three percent option or the 60 percent option.

Stakeholders at the July 2009 IMP meeting proposed that no amendments be made to SFP Regulation Section 1859.83(f), so that the district can have ability to choose between the three percent or 60% allowance. Stakeholders believe the current regulations provide districts the flexibility necessary for an array of modernization projects. These comments will be carried forward to the August 26, 2009 SAB meeting for discussion.

At the July 2009 IMP meeting, a concern was raised regarding the eligibility of soft costs for accessibility and fire code requirements. Current regulations do not allow the inclusion of soft costs in the 60 percent calculation. This issue was discussed at the August 23, 2006 SAB meeting where staff commented that funding for design fees and design costs should not be considered excessive, because seven percent of the modernization base grant already provides funding for such costs.

In order to comply with the Board's directive at the August 2008 meeting, staff is presenting proposed amendments to SFP Regulation Section 1859.83(f) which would remove the three percent option permanently. Additionally, staff will present an alternative to the Board's direction that would allow projects with replacement building area of like kind construction and other modernization work the opportunity to select either the 60 percent or three percent allowance as shown in Attachment A & B.

State Allocation Board's Direction per the August 2008 Meeting:

Amend the regulations as outlined in Attachments A and B to discontinue the three percent option entirely.

Alternative to State Allocation Board's Direction:

Amend the regulations as outlined in Attachment C and D to allow projects that include replacement building area of like kind construction to select the three percent option or the 60 percent option. Projects that do not include replacement building area of like kind construction may only request the 60 percent option.

The benefit to this alternative would be:

- Districts with replacement building area of like kind projects would be eligible for a three percent increase vs. receiving no funding over and above the accessibility and fire code funding included in the modernization base grant.
- Districts with replacement building area of like kind projects would have the flexibility to select either the 60 percent option or the three percent option, but not both.

ATTACHMENT A

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

...

- (f) Excessive cost due to accessibility and fire code requirements:
- (1) ~~The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, the district has the option of may requesting 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):~~
- (A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79.
- (B) Determine the difference of 1. minus 2.:
 - 1. Multiply the pupils requested in the application by the New Construction Grant.
 - 2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
- ~~(2) Projects constructed pursuant to Section 1859.79.2(a)(1) may be provided a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant.~~
- ~~(3) (2)~~ The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
- ~~(4) (3)~~ The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$14,400 for each additional stop of the new elevator required in ~~(3) (2)~~ above if the Approved Application was received on or before April 29, 2002.
 - (B) \$10,800 for each additional stop of the new elevator required in ~~(3) (2)~~ above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Attachment B
Form SAB 50-04 Instructions

Page 1 of 9
Section 6

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

If the request includes funding for accessibility and fire code requirement pursuant to Section 1859.83(f), the DSA approved list of the minimum accessibility work required and a detailed cost estimate for the work in the plans.

Page 4 of 9

7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction, Modernization or Charter School Facility Program Rehabilitation Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for accessibility requirements are allowed only if required by the Division of the State Architect (DSA). ~~At the district's option, t~~The district may request ~~three percent of the modernization base grant or enter~~ 60 percent of the amount calculated pursuant to Regulation Section 1859.83(f). Attach a copy of the DSA approved list that shows the minimum work necessary for accessibility requirements.

Form SAB 50-04

Page 7 of 9

7. Excessive Cost Hardship Request

Modernization or Charter School Facility Program Rehabilitation Only

- Rehabilitation/Mitigation [Section 1859.83(e)]: \$ _____
- Geographic Percent Factor: _____ %
- Accessibility/Fire Code
 - ~~3 percent of base grant; or,~~

- (60 percent of minimum work) \$ _____
- Number of 2-Stop Elevators: _____
- Number of Additional Stops: _____
- Small Size Project
- Urban/Security/Impacted site

ATTACHMENT C

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

- ...
- (f) Excessive cost due to accessibility and fire code requirements:
 - (1) The district is eligible for a Modernization Excessive Cost Hardship Grant equal to ~~three percent of the Modernization Grant for accessibility and fire code requirements. In lieu of three percent, the district has the option of requesting 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B):~~
 - (A) Determine the difference of the verified hard construction costs of the minimum accessibility and fire code work necessary to receive approval from the DSA minus seven percent of the sum of the Modernization Grant and the district matching share of the Modernization Grant pursuant to Section 1859.79
 - (B) Determine the difference of 1. minus 2.:
 - 1. Multiply the pupils requested in the application by the New Construction Grant.
 - 2. The sum of the State and district share of the pupils requested on the Form SAB 50-04 multiplied by the grant determined pursuant to Section 1859.78 and 1859.78.3.
 - (2) ~~Projects that contain replacement building area of like kind constructed pursuant to Section 1859.79.2(a)(1) may request be provided~~ a Modernization Excessive Cost Hardship Grant equal to either three percent of the Modernization Grant or 60 percent of the amount determined in (A), not to exceed 60 percent of the amount determined in (B).
 - (3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (C) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (D) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
 - (4) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (C) \$14,400 for each additional stop of the new elevator required in (3) above if the Approved Application was received on or before April 29, 2002.
 - (D) \$10,800 for each additional stop of the new elevator required in (3) above if the Approved Application was received after April 29, 2002.

The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.32, 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Attachment D
Form SAB 50-04 Instructions

Page 1 of 9

Section 6

Modernization Adjusted Grant pursuant to Section 1859.70. For purposes of this apportionment, the following documents must be submitted with this form (as appropriate):

If the request includes funding for accessibility and fire code requirement pursuant to Section 1859.83(f), the DSA approved list of the minimum accessibility work required and a detailed cost estimate for the work in the plans.

Page 4 of 9

7. Excessive Cost Hardship Request

Check the appropriate box to request an augmentation to the New Construction, Modernization or Charter School Facility Program Rehabilitation Grants for an excessive cost hardship for the items listed. Refer to Section 1859.83 for eligibility criteria. Requests for excessive cost grants for accessibility requirements are allowed only if required by the Division of the State Architect (DSA). ~~At the district's option, the district may request three percent of the modernization base grant or e~~Enter 60 percent of the amount calculated pursuant to Regulation Section 1859.83(f)(1). In lieu of this funding, projects that include replacement building area of like kind may request three percent of the Modernization Grant. Attach a copy of the DSA approved list that shows the minimum work necessary for accessibility requirements.

Form SAB 50-04

Page 7 of 9

Section 6

Modernization or Charter School Facility Program Rehabilitation Only

- Rehabilitation/Mitigation [Section 1859.83(e)]:** \$ _____
- Geographic Percent Factor:** _____ %
- Accessibility/Fire Code**
 - 3 percent of base grant; ~~or,~~**
 - 60 percent of minimum work** \$ _____
- Number of 2-Stop Elevators:** _____
- Number of Additional Stops:** _____
- Small Size Project**
- Urban/Security/Impacted site**

ATTACHMENT E

BACKGROUND AND DATA ANALYSIS RESULTS

The Modernization Accessibility and Fire Code Requirements Grant:

A district should complete the accessibility and fire code checklist(s) when a modernization project contains work that meets the criteria of minimum work necessary for accessibility and fire code requirements.

The steps in applying for an accessibility and fire code requirements grant allowance, when submitting a complete modernization funding application are as follows:

- A district submits a completed access compliance and/or fire life safety checklist to the DSA for approval.
- The DSA approved checklist(s) is then submitted by the district along with a complete modernization funding application to the OPSC.
- The SAB approves the application and provides an unfunded approval or an apportionment.

Accessibility and Fire Code Compliance:

The Modernization Excessive Cost Hardship Grant for accessibility and fire code compliance is based on estimated construction costs as reported by the district on the access compliance and/or fire life safety checklist. These costs must represent the minimum work necessary to receive approval from the Access Compliance Unit of the DSA. The grant is calculated by taking the accessibility and fire code requirements compliance costs and subtracting seven percent of the sum of the State and district share of the project's modernization base grant.

If the construction costs of a modernization project exceed 50 percent of the building replacement cost, the building must be brought into compliance with the current building code as part of the Title 24 requirements. Therefore, the maximum a district can receive for access compliance is the difference between the new construction base grant (which represents approximately 50 percent of the replacement cost) and the sum of the State and district share of the modernization project's base grant. The chart below illustrates how the Excessive Cost Hardship Grant cap is calculated based on one pupil grant, how the seven percent is applied, and how the three percent option is determined:

1) Calculation of Maximum Grant (Cap)—Based on One Elementary Pupil

State and District Share of New Construction Base Grant at 50%		State and District Share of 100% Modernization Base Grant		Maximum Grant Allowable for Accessibility and Fire Code Requirements
\$9,369	-	\$5,947	=	\$3,422

2) Examples of 60 Percent Calculation of the Excessive Cost Hardship Grant

If the Minimum Accessibility and Fire Code Work Verified by DSA is:		7% of State and District Share of Modernization Base Grant		Difference		Excessive Cost Hardship Grant at 100%
\$2,000	-	\$416	=	\$1,584		\$1,584
\$5,000	-	\$416	=	\$4,584		\$3,422 (cap)
\$350	-	\$416	=	-\$66		\$0

3) Example of 3 Percent Calculation

State and District Share of 100% Modernization Base Grant		3% increase of the State and District Share of Modernization Base Grant		Excessive Cost Hardship Grant at 100%
\$5,947	x	3%	=	\$178

Modernization projects that consist of replacement of buildings with like-kind facilities instead of modernizing them are eligible for an Excessive Cost Hardship Grant equal to three percent of the modernization base grant. Replacement building area of like kind means facilities are demolished and replaced with new facilities of the same square footage. It is not possible to itemize compliance costs in replacement projects because the items are already embedded in the overall building design.

From August 2007 to December 2008 (16 months), a total of 319 modernization applications received a grant apportionment that included an Excessive Cost Hardship Grant for accessibility and fire code requirements. Using this data, OPSC staff conducted an analysis and identified the following findings:

1. Data Analysis: Modernization Projects with an Accessibility and Fire Code Grant Allowance

Over the past 16 months, 223 out of 319 modernization projects (70 percent) received the Excessive Cost Hardship Grant allowance for accessibility and fire code requirements under the 60 percent option versus the three percent option. The SAB apportioned a total of \$59.9 million for accessibility and fire code requirements under the Excessive Cost Hardship Grant. Of this amount, \$55.2 million (92 percent) was allotted to projects that chose the 60 percent option, \$3.6 million (six percent) was allotted to projects that selected the three percent option and did not contain replacement building area of like kind, and \$1.1 million (two percent) was allotted to projects that selected the three percent option and contained replacement building area of like kind. Figure 1 illustrates the type of option selected by districts and the amount of apportionments provided.

Modernization Projects/Appportionment for the Accessibility and Fire Code Grant Allowance

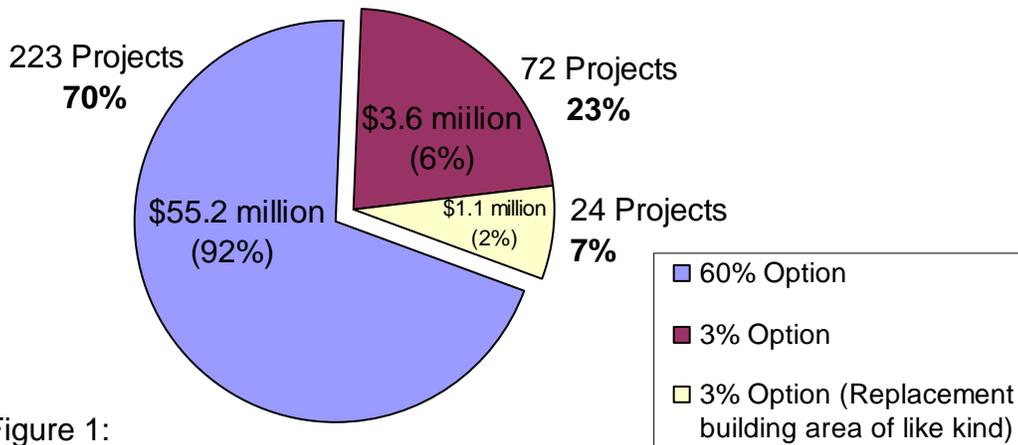


Figure 1:

2. Data Analysis: No 60 Percent Option

The apportionment for 223 projects that selected the 60 percent option totaled \$55.2 million. Under the 60 percent option, the average cost per project is \$248,000. If only the three percent option had been available during this period, districts would have received only \$9.4 million versus \$55.2 million for the minimum work necessary for accessibility and fire code requirements. Under the three percent option, the average cost per project is \$42,000. Figure 2 shows how districts benefit from the 60 percent option for accessibility and fire code requirements.

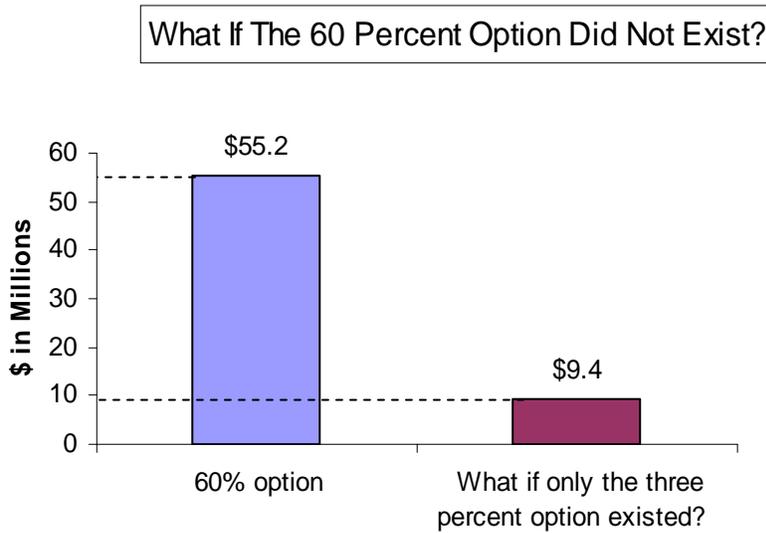


Figure 2:

3. Data Analysis: No Three Percent Option

The apportionment for 45 projects that selected the three percent option totaled \$2.8 million. Under the three percent option, the average cost per project is \$62,000. If only the 60 percent option had been available during this period, districts would have received only \$2 million versus \$2.8 million for the minimum work necessary for accessibility and fire code requirements. Under the 60 percent option, the average cost per project is \$44,000. Figure 3 shows how districts benefit from the three percent option for accessibility and fire code requirements.

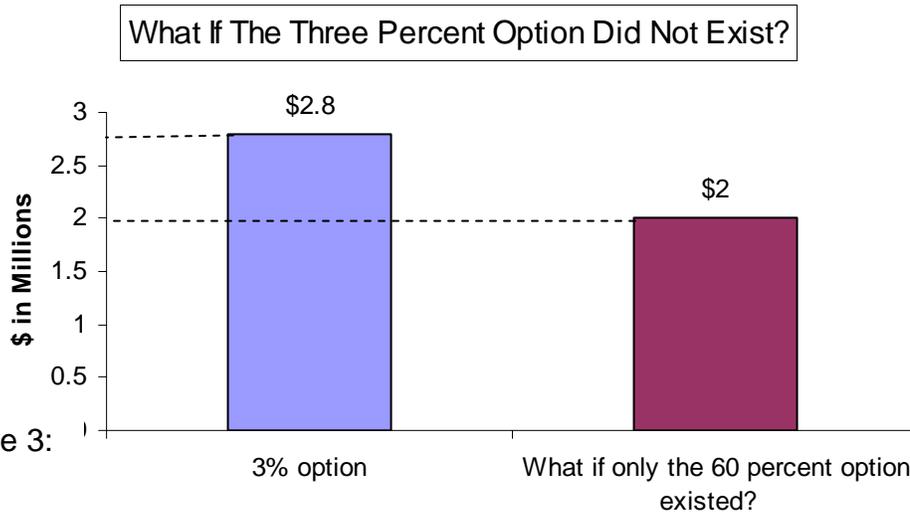


Figure 3:

4. Data Analysis: Top 10 Percent of Modernization Projects

Of the 319 modernization projects apportioned from August 2007 to December 2008 with an accessibility and fire code requirements grant allowance, the top 10 percent, or 32 projects, were reviewed to determine whether there was a trend for projects with a higher base grant to select one option over another. Figure 4 shows that large projects (based on the amount of base grant received) tend to select the 60 percent option rather than the three percent option.

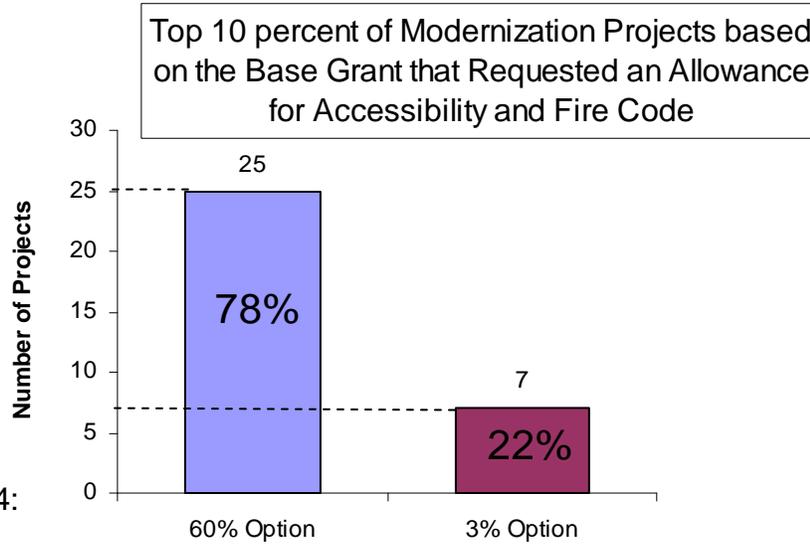


Figure 4:

STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE MEETING
August 6, 2009

NEW FACILITY HARDSHIP REQUEST CHECKLIST & IMPROVED APPEAL REQUEST FORM

PURPOSE

To present a proposed Facility Hardship Request Checklist to improve the facility hardship application process, as well as an improved *School District Appeal Request* (Form SAB 189).

BACKGROUND

When a district is faced with a facility-related threat to the health and safety of students, it may be eligible for facility hardship funding. Such districts also have the opportunity to present potential facility hardship replacement or rehabilitation projects to the Board for conceptual approval. A conceptual approval allows the district to move a project forward with confidence that the Board considers the hazardous situation and proposed mitigation plan eligible for facility hardship funding.

Currently, when a district submits a facility hardship request to the Office of Public School Construction (OPSC) the district must submit both a Form SAB 189 and also a partially completed *Application for Funding* (Form SAB 50-04). However, a facility hardship request is not an appeal and, when the request is for a conceptual approval, it is both unfitting and confusing to use a Form SAB 50-04 because a conceptual approval request is not a funding request. To remedy this, Staff proposes a simplified process using a checklist for all facility hardship requests. No additional forms would be required for facility hardship conceptual approval requests; funding requests would require the Facility Hardship Request Checklist as well as a Form SAB 50-04.

Appeal requests will still be made using the Form SAB 189, which is proposed to be modified to help make appeal requests more clear.

STAFF COMMENTS

There are no changes proposed regarding eligibility or qualification for facility hardship replacement or rehabilitation.

The proposed Facility Hardship Request Checklist provides clear and concise direction to applicant districts. It assists districts in defining a request, which enables more expeditious review by Staff.

The checklist is intended to provide a comprehensive list of information and documentation needed when submitting a complete request package to the OPSC. This approach will help avoid workload backlogs caused by incomplete submittals. Incomplete submittals significantly extend processing time and, sometimes, turn out to not meet the basic requirements for facility hardship eligibility. The list of required information and documentation will help ensure that only complete facility hardship requests are accepted for review and presentation to the Board.

The proposed Form SAB 189 is modified to add a section where districts will indicate the law, Regulation, and/or SAB policy that support the district's request. This is intended to help districts clarify their requests and to assist OPSC Staff in analysis of the requests.

No regulatory changes are needed to implement the new checklist or modified Form SAB 189, as neither are part of the School Facility Program regulations. Staff proposes that the new Facility Hardship Request Checklist and improved Form SAB 189 will be available to school districts via the OPSC website by August 15, 2009. The improved facility hardship request and appeal request processes will be required for submittal to the OPSC effective September 1, 2009.

SCHOOL DISTRICT FACILITY HARDSHIP REQUEST

August 2009

Page 1 of 3

GENERAL INSTRUCTIONS

School districts shall use this checklist to request approval by the State Allocation Board (SAB) for a facility hardship application. This checklist is to be used for both conceptual approval requests and funding requests of facility hardship projects, including seismic mitigation. School districts may request facility hardship funding without a conceptual approval; however, a conceptual approval provides the benefit of assurance, prior to a funding request, that the hazardous conditions and proposed scope of mitigation work will be eligible for facility hardship funding. The district must indicate the applicable facility hardship category and provide a description of the district's request. The district must submit all supporting documentation to the Office of Public School Construction (OPSC). Requests for SAB consideration are processed to the Board upon receipt by the OPSC of all required documentation and upon completion of a thorough analysis by the OPSC. All facility hardship requests that are incomplete will be returned. More information about the facility hardship and seismic mitigation programs can be found at www.opsc.dgs.ca.gov.

School District	Application Number*
School Name	County

* Enter the Application Number that has been assigned to this project by the OPSC. Leave blank if this is the first request related to this project.

Type of Application

Check the applicable box to indicate whether the district is seeking a conceptual approval of its facility hardship project or is presenting a complete facility hardship request for funding. Also indicate "Replacement" if costs to mitigate the health and safety threat are *greater* than 50 percent of the "Current Replacement Cost," or "Rehabilitation" if *less* than 50 percent of the "Current Replacement Cost," as defined in SFP Regulation Section 1859.82.2.

- Conceptual Approval
 - Replacement
 - Rehabilitation

- Funding Request
 - Replacement
 - Rehabilitation

Type(s) of Hazard:

- Mold
- Seismic
- Structural Deficiency
- Fire Damage
- Asbestos
- Proximity to Hazard
- Toxic Soil
- Other: _____

Description

Include a chronological narrative of circumstances and any other information relevant to the district's request:

Section I

This section must be completed for both conceptual approval requests and funding requests.

Required Documents

Check every box below to indicate required information is included with the district's submittal.

Industry Specialist's Report

Report must identify and substantiate the health and safety threat and detail the minimum work necessary to mitigate the problem.

Indicate the type of industry specialist that prepared the report:

Structural Engineer Environmental Specialist Electrical Engineer
 Geotechnical Engineer Other (specify): _____

Government Concurrence

Written concurrence from a State-level agency must specifically note the presence of a threat to the health and safety of students and that the proposed work represents the minimum work necessary to mitigate the threat.

Indicate the type of Government entity that provided concurrence with the specialist's report:

Division of the State Architect Department of Toxic Substances Control Department of Health Services
 California Highway Patrol California Geological Survey Other (specify): _____

Corrective Plan

The district's detailed corrective plan must represent the minimum work necessary to mitigate the health and safety threat and must include a narrative of all alternatives considered.

Detailed Cost Estimate

The cost estimate must not include lump sums, and it must address only the minimum work necessary to mitigate the problem. A cost/benefit analysis must also be included to compare cost of mitigation work to the Current Replacement Cost as defined in SFP Regulation Section 1859.82.2.

Site Diagram

Indicate affected areas of the site. For buildings, include their ages and square footages. For "Toilet" or "Other" building areas that are affected, indicate those areas and their square footages separately. Covered corridors should be excluded from square footage.

Photos showing hazardous conditions, affected facilities, and other relevant areas of concern.

Other substantiating documentation may be attached to this checklist as necessary to support the district's request.

Additional Information

Check boxes and complete fields below as applicable.

Indicate the type of school affected:

- Elementary
- Middle
- High
- Other (specify): _____

Is this facility hardship request for a Seismic Mitigation project? Yes No

Have affected facilities been vacated? Yes No

If Yes, describe how students are currently being housed:

Has the district been approved for Financial Hardship assistance? (If Yes, verification must be provided) Yes No
If No, does the district anticipate filing for Financial Hardship? Yes No

Is the district eligible for insurance compensation related to the hazardous conditions at the site? Yes No
 If Yes, indicate estimated amount the district may receive: \$ _____

Is the district pursuing litigation related to the hazardous conditions at the site? Yes No
 If Yes, indicate the amount being sought: \$ _____

Indicate the type(s) of facilities affected and included in the project:

Classrooms Core Facilities Playground/fields Other: _____

If Classrooms are included in the project, indicate the number and types of classrooms:

	Permanent	Portable	Total
Classrooms in this project:			
Classrooms on entire site:			

If Core Facilities are included in the project, list the building types and their square footages (this should correspond to the site diagram included with the district's request):

SECTION II

This section must be completed for conceptual requests only. For funding requests, Section II does not need to be completed, and a Form SAB 50-04 must be submitted.

Estimated project cost (100%): \$ _____

Project will be located on:

- New Site
- Existing Site
- Existing Site w/Additional Site Acquisition
- Existing School Site, Leased
- Leased Site with No Existing School Facilities

If the project requires a new site or land acquisition for an existing site, indicate the following:

Proposed Total New Acreage: _____

Useable Master Planned Acreage (per California Department of Education): _____

Recommended Site Size (per California Department of Education): _____

Site Acquisition Cost: \$ _____

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE		DATE
AUTHORIZED DISTRICT REPRESENTATIVE NAME (PRINTED)	TELEPHONE NUMBER	EMAIL ADDRESS

GENERAL INSTRUCTIONS

School districts are required to use this form to initiate an appeal or other special request for consideration by the State Allocation Board (SAB). The District must state very specifically and succinctly the purpose and description of the district's request. The district must submit all supporting documentation to the Office of Public School Construction (OPSC). Requests for SAB consideration are processed to the Board upon receipt by the OPSC of all required documentation and upon completion of a thorough analysis by the OPSC.

SPECIFIC INSTRUCTIONS**Purpose of Request**

Provide a brief statement of the district's request and number the components of the request if it has multiple parts.

Basis of Request

Cite the applicable references in law, regulation or SAB policy.

Description

Include the following in the description:

1. The background and circumstances which prompted the district's request.
2. Information relevant to the issues of the request.
3. The sequence of events and participants pertinent to the issues.
4. A statement explaining why the SAB should grant the district's request based on law, regulation, or SAB policy, as cited in above.

Fiscal Information

For purposes of determining the information below, please refer to the district's bonding capacity and other requirements for local general obligation bonds and Mello-Roos bonds as outlined in Education Code Section 15100 through 15425.

On line:

1. Indicate the dollar amount of the district's bonding capacity (at 100 percent) as of the date of this request.
2. Indicate the dollar amount of the bonds authorized by the district's electorate.
3. Indicate the dollar amount of the district's current bond indebtedness (i.e. bonds issued) as of the date of this request.
4. Indicate the developer fee rate charged per square foot by the district for commercial/industrial and residential development.

Attachments

Attach substantiating documentation as necessary to support the district's request. Note that all supporting documentation must be received by the OPSC prior to presentation to the SAB.

SCHOOL DISTRICT APPEAL REQUEST

SCHOOL DISTRICT	APPLICATION NUMBER
SCHOOL NAME	COUNTY
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS

Purpose of Request:

Basis of Request

- Law (Statute) _____
- Regulation _____
- SAB Policy _____
- Other (specify) _____

Description:

Fiscal Information:

1. District Bonding Capacity (100 Percent): \$ _____
2. Amount of Bonds Authorized: \$ _____
3. District's Current Bonded Indebtedness: \$ _____
4. District's Current Developer Fee Rate:
 - Commercial/Industrial (Per Sq Ft): \$ _____
 - Residential (Per Sq Ft): \$ _____

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
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